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20 The Moodsters Company

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 Denise Daniels and
18 The Moodsters Company;

Case No. 2:17-cv-04527-PSG-SK

19 Plaintiffs,

Second Amended Complaint

20 v.

Jury Trial Demanded

21 The Walt Disney Company;
22 Disney Enterprises, Inc.;
23 Disney Consumer Products
24 and Interactive Media, Inc.;
25 Disney Interactive Studios, Inc.;
Disney Shopping, Inc.; and
Pixar

26 Defendants.

Introduction

1. Disney·Pixar released *Inside Out* in 2015 to rave reviews. *Inside Out* was later nominated for two Academy Awards and won the Academy Award for Best Original Screenplay. Critics continue to applaud Disney·Pixar for the inventiveness, creativity, and novelty in the fundamental premise of *Inside Out*: the use of anthropomorphized emotions Joy, Sadness, Anger, Fear, and Disgust as individual characters within an 11-year old girl.

2. In June 2017, in fact, the *New York Times* ranked *Inside Out* as the seventh best movie in the 21st century so far. The article explained, “The personification of abstract concepts and the visual rendering of human consciousness from the inside are astonishing feats, executed with unparalleled inventiveness.”

3. But Disney·Pixar was not the first to conceive of the idea of anthropomorphized, color-coded characters inside a child each of which represents a single emotion, as depicted in *Inside Out*.

4. Denise Daniels has dedicated her career over the last four decades to help children better recognize, understand, and manage their emotions. As part of her distinguished efforts, Daniels conceived of—and developed—a children’s program called *The Moodsters*.

5. *The Moodsters* live “deep down inside every child,” and features five main characters. Each character is an animated, anthropomorphized figure representing a single emotion with a single corresponding body color, specifically, happiness (yellow), sadness (blue), anger (red), fear (green), and love (pink).

6. From 2005 through 2009, and every year in between, Daniels, along with her industry-leading team, approached and pitched Disney·Pixar to partner on a project relating to *The Moodsters*.

7. The individuals at Disney·Pixar who had access to materials and

descriptions of *The Moodsters* include Thomas Staggs, then CFO of The Walt Disney Corporation; Pete Docter, of Pixar; Rich Ross, then President of Disney Channels Worldwide, and later Chairman of Walt Disney Studios; Nancy Kanter, of Playhouse Disney (now referred to as Disney Junior); Paula Rosenthal, of Playhouse Disney; and Roy E. Disney, who was the son and nephew of the founders of The Walt Disney Company.

7 8. Daniels and her team pitched and disclosed the idea underlying the
8 *The Moodsters* to Disney·Pixar with the understanding, as is custom in the
9 entertainment and motion picture industry, that Daniels would be compensated
10 if Disney·Pixar used the idea. Disney·Pixar accepted these disclosures under
11 these circumstances.

12 9. Disney·Pixar has used Daniels' idea in the animated motion
13 picture *Inside Out* and its related merchandise. Disney·Pixar has not
14 compensated Daniels.

15 10. Disney·Pixar has also infringed copyrights owned by Daniels'
16 company, The Moodsters Company, through the release and sales associated
17 with *Inside Out*.

18 11. This suit seeks to hold Disney·Pixar accountable for its
19 unauthorized use of The Moodsters Company’s intellectual property. In fact,
20 such unauthorized use in the entertainment industry is a problem that
21 Disney·Pixar recently expressed concern to its inventors about: “The
22 unauthorized use of intellectual property in the entertainment industry
23 generally continues to be a significant challenge for intellectual property rights
24 holders.” The Walt Disney Co., Annual Report (Form 10-K) (Nov. 23, 2016).
25 As set forth below, Disney·Pixar is part of this problem, and should compensate
26 The Moodsters Company for its infringement.

The Parties

28 || 12. Plaintiff Denise Daniels is a citizen and resident of the State of

1 Minnesota.

2 13. Plaintiff The Moodsters Company is a Minnesota corporation with
3 its principal place of business in Minneapolis, Minnesota. Daniels is the sole
4 shareholder and CEO of The Moodsters Company.

5 14. Defendant The Walt Disney Company is a Delaware corporation
6 with its principal place of business in Burbank, California.

7 15. Defendant Disney Enterprises, Inc. is a Delaware corporation with
8 its principal place of business in Burbank, California.

9 16. Defendant Disney Consumer Products and Interactive Media, Inc.
10 is a California corporation with its principal place of business in Burbank,
11 California. Disney Consumer Products and Interactive Media, Inc. is a
12 subsidiary of Disney Enterprises, Inc.

13 17. Defendant Disney Interactive Studios, Inc. is a California
14 corporation with its principal place of business in Burbank, California. Disney
15 Interactive Studios, Inc. is a subsidiary of Disney Enterprises, Inc.

16 18. Defendant Disney Shopping, Inc. is a Delaware corporation with
17 its principal place of business in Burbank, California. Disney Shopping, Inc. is
18 a subsidiary of Disney Enterprises Inc.

19 19. Defendant Pixar is a California corporation with its principal place
20 of business in Emeryville, CA 94608.

21 20. The Defendants are collectively referred to in this Complaint as
22 Disney-Pixar.

23 **Jurisdiction and Venue**

24 21. This action arises under the copyright laws of the United States and
25 California law.

26 22. This Court has original subject matter jurisdiction over the claims
27 for copyright infringement (Counts 2-6) under 17 U.S.C. §501, 28 U.S.C.
28 §1331, and 28 U.S.C. §1338(a); and supplemental jurisdiction over the related

state law claim (Count 1) under 28 U.S.C. §1367.

23. This Court also has diversity jurisdiction over the state law claim (Count 1) under 28 U.S.C. §1332. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Daniels and The Moodsters Company, on one hand, and Disney·Pixar, on the other hand, are citizens of different states within the meaning of 28 U.S.C. §1332.

24. This Court has personal jurisdiction over Disney·Pixar because all Defendants reside in the State of California.

25. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because The Walt Disney Company, Disney Enterprises, Inc., Disney Consumer Products and Interactive Media, Inc., Disney Interactive Studios, Inc., Disney Shopping, Inc., reside in this District, and Pixar is a resident of California; and a substantial part of the events and omissions giving rise to The Moodsters Company's claims occurred in this District.

Factual Background

Denise Daniels is a nationally recognized child development expert

26. Daniels has over 40 years of experience in promoting children's social and emotional development.

27. In 1986, with a background in Pediatric Oncology Nursing, Childhood Bereavement, and Crisis Intervention, Daniels co-founded the national non-profit National Childhood Grief Institute.

28. In Daniels' role as Executive Director, she traveled across the U.S. and around the globe providing direct services for schools, Minnesota's judicial system, and for children in refugee camps who had experienced grief and loss. During Operation Desert Storm, she had the distinction of working with military families at the request of Four Star General William Vessey, Chairman of the Joint Chiefs of Staff for the U.S. Pentagon. At the request of the U.S. State Department, Daniels and her team traveled to devastated areas to provide

1 grief counseling and crisis intervention for young victims, such as in the
2 aftermath of Hurricane Katrina, and the 2004 tsunami in Southeast Asia. She
3 was called upon to help children and families cope with the Oklahoma City
4 Bombing, the shooting at Columbine High School, and the terror attacks on
5 September 11 in New York City. In the aftermath of September 11, Daniels
6 authored a children's grief workbook called *First Aid for Feelings*. Ex. 1. Fifteen
7 million copies were distributed to school children across the country.

8 29. Daniels shared her expertise through broadcast television as the
9 first parenting expert for NBC's Today show in 1991. In 1995, she co-hosted
10 her own daily, nationally syndicated, parenting show on NBC's America's
11 Talking Network.

12 30. Daniels and her team won a Peabody Award for her work on a
13 PBS television special helping children understand and cope with war.

14 31. Daniels has also appeared on Oprah, Dateline, The View, CNN,
15 NBC's Nightly News, Larry King Live, Good Morning America, and Fox
16 News. Daniels has also been featured in the *Wall Street Journal*, the *New York*
17 *Times*, the *Washington Post, Inc.*, *Redbook*, *U.S. News & World Report*, and *Parents*,
18 *Parenting*, *People*, and *Newsweek* magazines.

19 32. Fortune 500 companies have recognized Daniels as a leader in the
20 area of children's social and emotional development. In 1998, for instance,
21 Pfizer Pediatrics retained Daniels as a consultant to develop a program to help
22 pediatric residents better communicate and emotionally connect with their
23 young pediatric patients. The *First Aid for Feelings* Health Care Initiative
24 included the creation of a children's Feeling Thermometer. Pfizer Pediatrics
25 distributed this thermometer to 40,000 children undergoing counseling at
26 Ground Zero and throughout New York City. Research has since shown that
27 pediatric patients whose physicians implemented Daniels' *First Aid for Feelings*
28 program required less pain medication and sustained shorter hospitalizations.

1 These results were the impetus for Daniels to continue her work in children's
2 emotional intelligence.

3 33. Also through her partnership with Pfizer, Daniels developed a
4 program to help pediatric patients cope with emotional issues surrounding
5 hospitalization. This program has been used in over 200 pediatric units across
6 the country, and integrated into ten U.S. medical school training programs.

7 34. While consulting for Pfizer Pediatrics, Daniels had the privilege of
8 collaborating with the late Dr. Candace Pert of the National Institutes of
9 Health and Georgetown University School of Medicine. Dr. Pert was an
10 internationally recognized neuroscientist and pharmacologist. She served as a
11 mentor to Daniels, and influenced Daniels' strong belief in implementing
12 integrative medicine to improve patient outcomes.

13 35. In total, Daniels is a published author of nine children's self-help
14 books.

The Conception and Development of *The Moodsters*

16 36. Daniels wanted to expand on her idea of using color-coded
17 illustrations to help children with their social and emotional development.

18 37. Daniels conceived of *The Moodsters*, a children's animated
19 television pilot ("The Moodsters Pilot") starring five color-coded
20 anthropomorphic characters, each individually representing a single emotion:
21 happiness, sadness, anger, fear, and love. Ex. 2.

22 38. These characters live in an abstract world inside a child. For
23 instance, early materials about *The Moodsters* explain that “[s]omewhere deep
24 down inside every child is a wonderous world where The Moodsters™ live.”
25 Ex. 3 at 1.

26 39. Daniels recruited a high-profile and accomplished team to execute
27 on her vision for *The Moodsters* and formed The Moodsters Company. This
28 team included, among others, Lisa Simon, Louise Gikow, Marc Brackett,

1 Ph.D., and A.J. Dewey.

2 **Lisa Simon**

3 40. The late Lisa Simon served as co-executive producer for *The*
 4 *Moodsters*. Simon was a former Assistant Vice President of Sesame Street. She
 5 was a producer and director of “Sesame Street” for over fourteen years, where
 6 she brought new life and direction to what had already become a benchmark
 7 for quality educational television for pre-school children. She won 15 Emmy
 8 Awards, as well as a Peabody Award, for her work as a producer and director.
 9 She worked on several animation projects for Little Airplane Productions, Nick
 10 Jr., and PBS. Simon also operated her own company, simon-sez productions,
 11 and worked with major corporate, film, and video production companies.
 12 Among Simon’s clients were PBS, the Discovery Network, Sony, and Disney.

13 **Louise Gikow**

14 41. Louise Gikow served as co-executive producer for *The Moodsters*,
 15 along with Simon. Gikow is an Emmy Award-winning author and composer of
 16 over 150 scripts, books, and songs. She was a consulting producer and staff
 17 writer for the PBS series “Between the Lions.” She was the co-creator and head
 18 writer of Playhouse Disney’s hit show, “Johnny and the Sprites.” And Gikow
 19 was the co-creator of “Lomax: The Hound of Music,” a music education show
 20 for children on PBS Kids. Gikow was head writer for numerous international
 21 projects, including the Middle Eastern co-production of “Sesame Stories.”

22 **A.J. Dewey**

23 42. A.J. Dewey served as the creative director for *The Moodsters*.
 24 Dewey is an award-winning illustrator and designer whose work spans a broad
 25 range of mediums and whose clients include Sesame Street, Disney, IBM,
 26 AT&T, Marvel, Nascar and Pepsi Cola. His illustrations can be seen in several
 27 children’s book series and hundreds of retail products. Dewey’s television work
 28 includes “Animal Planet,” “Video Buddy,” “Once Upon a Tree” and “Dr.

1 Seuss's My Many Colored Days," a symphonic animated version of the
 2 popular children's book. From 2004 to 2007, Dewey was the Senior Designer at
 3 Manhattan Toy, where he designed a broad list of toy products, including the
 4 2006 launches of Groovy Girls' Petrageous and Cirque du Soleil's premier line
 5 of children's products and textiles.

6 **Marc Brackett**

7 43. Marc Brackett, Ph.D. served as a curriculum advisor on *The*
 8 *Moodsters*. He is currently Director of the Yale Center for Emotional
 9 Intelligence and a professor in the Child Study Center at Yale University. He
 10 has published over 100 scholarly articles and is the recipient of numerous
 11 awards, including the Joseph E. Zins Award for his research on emotional
 12 intelligence in schools. His research has been featured in the *New York Times*,
 13 *Time Magazine*, and National Public Radio. He co-developed the RULER
 14 model of emotional literacy, which stands for five skills of emotional
 15 intelligence: **R**ecognizing, **U**nderstanding, **L**abeling, **E**xpressing, and
 16 **R**egulating emotions. This model was adopted by over 1,000 public, charter,
 17 and private schools across the United States and in other countries.

18 ***

19 44. Emotional intelligence played a preeminent role in the creation and
 20 development of *The Moodsters*. *The Moodsters*' mission is to help children
 21 recognize, understand, and regulate their emotions in a healthy and socially
 22 acceptable manner.

23 45. The role of emotional intelligence skills in children is of
 24 paramount importance in their growth and development. Research shows that
 25 children who learn emotional intelligence skills have less anxiety and
 26 depression; have fewer attention, learning, and behavior problems; are better
 27 problem-solvers; display greater social and leadership skills; and perform better

1 academically.

2 46. Dr. Brackett, as an advisor on *The Moodsters*, co-wrote the
3 *Emotional Literary Curriculum* with Dr. Susan E. Rivers, which laid out the
4 educational objectives needed to develop episodes of *The Moodsters*. *The*
5 *Moodsters*' animated show was designed to provide children with an
6 opportunity to learn "emotional literacy" using the RULER method. Daniels
7 and her team, therefore, designed *The Moodsters* to help children "acquire the
8 critical emotional knowledge and important life skills to succeed."

9 47. In particular, *The Moodsters* teaches children to recognize and
10 understand their emotions; develop the vocabulary to express those feelings;
11 and practice simple strategies that help them manage their emotions and tackle
12 the everyday challenges of growing up.

13 48. Daniels and her team created pitch materials, along with an
14 evidence-based curriculum, to substantiate particularized expressions of her
15 idea behind *The Moodsters*. Specifically, they prepared "a bible" for *The*
16 *Moodsters*, which is commonly referred to in the entertainment industry as an
17 outline of a television series' characters, settings, and other elements ("*The*
18 *Moodsters* Bible"). Ex. 3.

19 49. Daniels and her team completed the animated pilot episode for *The*
20 *Moodsters*, titled "The Amoodsment Mixup," in 2007. Ex. 2, 4.

21 50. Both *The Moodsters* Bible and Pilot revolve around five color-coded
22 main characters, each of which represents a single emotion. Because emotions
23 are an abstract concept with no known physical features or visual qualities,
24 these individual single-emotion characters are visually represented as
25 anthropomorphous figures with human characteristics, including expressive
26 body language, vocal characteristics, and facial expressions.

1 51. *The Moodsters* was designed and developed to foster emotional
2 intelligence in children.

3 52. These five characters each individually represent one of the
4 following single emotions: happiness, sadness, anger, fear, and love.

5 53. Each of the five characters is designed with a core body color:
6 (from top to bottom, left to right) happiness (yellow), sadness (blue), anger
7 (red), fear (green), and love (pink).





54. The Happy character of *The Moodsters* is Zazz.¹ The Happy character is an anthropomorphized animated character that represents the single emotion of happiness, designated by the core body color of yellow. The Happy character in *The Moodsters* is “quite optimistic and enthusiastic,” and the leader of the Moodsters. Ex. 3 at 3. The other Moodsters depend on the Happy character “whenever the going gets tough.” *Id.*

¹ The initial version of *The Moodsters* Bible listed the Happy character as Zip.

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55. The Sadness character is Snorf.² The Sadness character is an anthropomorphized animated character that represents the single emotion of sadness, and is designated by the core body color of blue. The Sadness character is melancholy, and known to “weep copiously.” *Id.* at 6. “But that’s okay, because he knows that it sometimes takes courage to cry.” *Id.*

² The initial version of *The Moodsters* Bible listed the Sadness character as Sniff.



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14 56. The Anger character is Rizzi.³ The Anger character is an
15 anthropomorphized animated character that represents the emotion of anger,
16 and is designated by the core body color of red. The Anger character is the
17 Moodster “most likely to blow her top.” *Id.* at 4. In fact, when she becomes
18 furious, lightening bolts appear and explode with sparks from her head. *Id.*

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27 ³ The initial version of *The Moodsters* Bible listed the Anger character as
28 Roary.



57. The Fear character is Scootz.⁴ The Fear character is an anthropomorphized animated character that represents the single emotion of fear, and is designated by the core body color of green. The Fear character is a nervous nellie. "Everything frightens him." *Id.* at 7.



⁴ The initial version of *The Moodsters* Bible listed the Fear character as Shake.

1 58. Love is represented by the character Oola.⁵ The Love character is
2 an anthropomorphized animated character that represents the single emotion of
3 love, and is designated by the core body color of pink. The Love character “is
4 full of love for the world.” *Id.* at 5. “She is patient and nurturing and a very
5 good listener.” *Id.*



16 59. These five characters live in a world deep inside every child.

Daniels and *The Moodsters* Company Pitched *Moodsters* Disney·Pixar from 2005 through 2009

19 60. Daniels and her team sought to partner with a network or studio to
20 produce *The Moodsters* on a national and international platform. Disney·Pixar,
21 Nickelodeon Jr., and PBS were entertainment companies that Daniels wanted
22 to partner with.

23 61. Daniels and her team first contacted Disney·Pixar about *The*
24 *Moodsters* in 2005. They then again contacted Disney·Pixar in 2006, 2007, 2008,
25 and 2009 about *The Moodsters*.

27 5 The initial version of *The Moodsters* Bible listed the Love character as
28 Oolvia.

1 62. Daniels and her team contacted a number of different individuals
 2 at Disney·Pixar about *The Moodsters*.

3 63. The following individuals at Disney·Pixar who received
 4 information about *The Moodsters* include Pete Docter, Thomas Staggs, Nancy
 5 Kanter, Paula Rosenthal, and Beth Gardiner.

6 64. In addition to the individuals listed in paragraph 63, Roy E. Disney
 7 and Rich Ross had access to *The Moodsters*.

8 65. In 2005, Gikow and Simon shared creative materials about *The*
 9 *Moodsters* with Paula Rosenthal, who worked for Playhouse Disney. Rosenthal
 10 then provided those materials about *The Moodsters* to Nancy Kanter, also of
 11 Playhouse Disney. Rosenthal requested an additional copy of *The Moodsters*
 12 materials for herself.

13 66. Rosenthal and Kanter at Disney, and Gikow and Simon, at The
 14 Moodsters Company, continued to discuss and share materials about *The*
 15 *Moodsters* in 2006 and 2007.

16 67. In 2008, a mutual friend put Daniels in touch with Staggs. Staggs
 17 was the CFO of The Walt Disney Company at the time. Daniels shared
 18 materials about *The Moodsters* with Staggs.

19 68. In May 2008, Staggs informed Daniels that he would share
 20 materials about *The Moodsters* with Roy E. Disney. Roy E. Disney was the son
 21 and nephew of the founders of The Walt Disney Corporation.

22 69. In June 2008, Staggs informed Daniels that he shared materials
 23 about *The Moodsters* with Rich Ross. At the time, Ross was the President of
 24 Disney Channels Worldwide. In 2009, Ross became Chairman of Walt Disney
 25 Studios.

26 70. Walt Disney Studios distributes films under various banners, which
 27 include Walt Disney Pictures and Pixar.

28 71. Daniels also called Docter to discuss *The Moodsters*. The two spoke

1 on the phone for an extended period of time, and Daniels walked Docter
 2 through in detail the characters, curriculum, and concept underlying *The*
 3 *Moodsters*.

4 72. In short, Disney·Pixar had access to *The Moodsters* well before 2010.

5 **Disney·Pixar Started Working on *Inside Out* in 2010**

6 73. Disney·Pixar started working on *Inside Out* in 2010.

7 74. Docter has explained that his motivation for the movie started
 8 when his daughter, who was 11 at the time, went through changes in her
 9 demeanor and how she managed her emotions.

10 75. Also during his initial stage of work, he reportedly reflected and
 11 wondered “what would be fun to see in animation, you know - what have I not
 12 seen?,” recognizing that Disney·Pixar had never before featured
 13 anthropomorphic emotions as characters inside a child before. This thought
 14 process purportedly led him “to have characters that represent emotions.”

15 76. Docter has explained the difficulty in taking *the idea* of characters
 16 that represent emotions, and actually *expressing* that idea. For instance, Docter
 17 has conceded that Disney·Pixar had never before expressed the idea of single
 18 emotions as characters:

19 The idea [for *Inside Out*] was rather abstract, but in my enthusiasm
 20 *I didn't realize just how difficult it would be to make it concrete*. Most of
 21 our films had somewhere to start: bugs, fish, robots . . . even our
 22 monsters were based on some combination of animals. *But what do*
 23 *emotions look like?* Or abstract thought? Or the subconscious? Here
 we had *nothing to measure against, nothing concrete* to tell us when
 we'd got it right.

24 Daniels, however, had solved the problem of how to take the abstract idea of
 25 emotions and make them concrete when she created *The Moodsters*. And she
 26 shared that idea with Disney·Pixar.

27 77. Docter, and his team at Disney·Pixar, also struggled to identify
 28 which emotions to include as characters, and how many emotions to feature.

1 78. For example, Docter and Disney·Pixar have maintained that they
2 researched the issue of how many emotions exist, and determined that there is
3 no consensus in the scientific community on that issue. Some scientists told
4 Docter and Disney·Pixar that there were only three basic main emotions.
5 Others maintained there were 16 emotions.

6 79. At various points in the development of the script, Disney·Pixar
7 included more than five emotions. For instance, Disney·Pixar considered using
8 at least pride, hope, envy, ennui, schadenfreude, awe, surprise, amusement,
9 and compassion. At one point, Disney·Pixar considered having 27 different
10 emotions.

11 80. Disney·Pixar ultimately settled on five emotions as characters—the
12 same number of emotions as characters in *The Moodsters*.

13 81. Four of the five emotions as characters in *Inside Out* are identical to
14 the characters in *The Moodsters*: Happy/Joy, Sadness, Fear, and Anger.

Disney-Pixar Released *Inside Out* in 2015

16 82. Disney·Pixar released *Inside Out* in the United States on June 19,
17 2015.

18 83. *Inside Out* is a movie that primarily takes place deep down inside an
19 11-year old girl, named Riley.

20 84. The five main characters in *Inside Out* are based on the following
21 single emotions: joy/happiness; sadness, anger; fear; and disgust.

22 85. Each of these main characters is an anthropomorphic, color-coded
23 animated character representing a single emotion.

24 86. The Joy character is reflected in the color yellow. "Hope and
25 optimism dictate all of her decisions."

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87. The Sadness character is reflected in the color blue. "Sometimes it
9 seems like the best thing to do is just lie on the floor and have a good cry."

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17. The Anger character is reflected in the color red. "He has a fiery
18 spirit and tends to explode (literally) when things don't go as planned." He is
19 quick to overreact and has little patience for life's imperfections.

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89. The Fear character is reflected in the color purple. "He is

1 constantly on the lookout for potential disasters.” “There are very few activities
2 and events that Fear does not find to be dangerous and possibly fatal.”



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11 90. The Disgust character is reflected in the color green. “Her job is to
12 keep Riley from being poisoned, physically or socially.”



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14 91. Disney·Pixar invested significant resources into the development of
15 *Inside Out*. The production budget for *Inside Out* was over \$170,000,000.

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17 92. This investment has paid off for Disney·Pixar. *Inside Out* was a
18 huge success at the box office.

19
20 93. Disney·Pixar generated gross revenue at the box office for *Inside*
21 *Out* of over \$350,000,000 domestically and over \$850,000,000 worldwide. Total
22 domestic and international ticket and DVD sales exceed \$950 million.

23
24 94. *Inside Out* was also lauded by critics. Some film critics praised *Inside*
25 *Out* for its novelty and originality. Anthony Lane of the *New Yorker*, for

1 instance, wrote “On the scale of inventiveness, ‘Inside Out’ will be hard to top
 2 this year.”

3 95. Disney·Pixar continues to promote *Inside Out* as an “inventive” and
 4 “groundbreaking” animated film.

5 96. One reason *Inside Out* is considered so novel, creative, and
 6 inventive is because Disney·Pixar had never before released an animated
 7 feature that anthropomorphized emotions as individual characters.

8 97. None of the three *Toy Story* movies, for instance, incorporate
 9 anthropomorphized emotions. Nor do any characters in that trilogy represent a
 10 single emotion which corresponds to a single color.

11 98. *Cars* and *Cars 2* are the same in this regard. None of the characters
 12 in these movies feature anthropomorphized emotions. And none of the
 13 characters represents a single emotion which corresponds to a single color.

14 99. *Monsters Inc.* was the first major motion picture that Docter
 15 directed. The characters in that movie, along with *Monsters University*, do not
 16 include anthropomorphized emotions. Nor does any single character represent
 17 a single emotion which corresponds to a single color.

18 100. The remainder of Pixar’s movies that pre-date *Inside Out* are no
 19 different. *A Bug’s Life*, *Finding Nemo*, *The Incredibles*, *Ratatouille*, *WALL-E*, *Brave*,
 20 and *Up*, are movies that do not include anthropomorphized emotions, nor
 21 characters that represent a single emotion which correspond to a single color.

22 101. The Walt Disney Company, including through Walt Disney
 23 Studios, has released over 75 animated films since *Snow White and the Seven*
 24 *Dwarfs* in 1938.

25 102. The Walt Disney Company, including through Walt Disney
 26 Studios, has never released an animated feature film that anthropomorphized
 27 emotions as characters.

28 103. The Walt Disney Company, including through Walt Disney

1 Studios, has never distributed a film with a main character that represented a
 2 single emotion which corresponds to a single color.

3 104. Disney·Pixar's single-emotion characters diverged from what made
 4 The Walt Disney Company so acclaimed. In its beginning, The Walt Disney
 5 Company established a new form of art through its early efforts at animation,
 6 which focused on bringing to life cartoon characters. As explained in Disney's
 7 *The Illusions of Life, Disney Animation*, by Frank Thomas and Ollie Johnson,
 8 "this new art of animation had the power to make the audience actually feel *the*
 9 *emotions* of a cartoon figure," with each character "thinking his own thoughts,
 10 and *experiencing his own emotions.*" The well-rounded and multi-dimensional
 11 nature of Disney's characters was foundational to what made Disney so famous
 12 and successful: "From the beginning, it was obvious that *the feelings of the*
 13 *characters* would be the heart and soul of the Disney pictures."

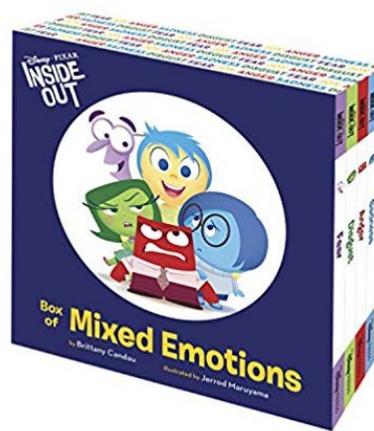
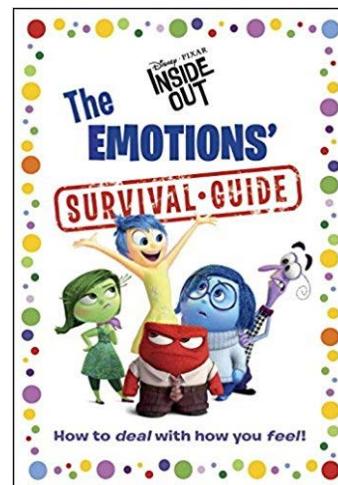
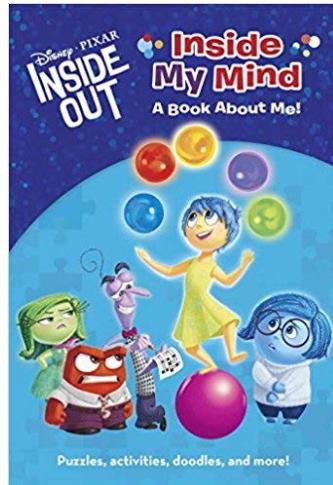
14 105. Disney·Pixar's single-emotion, color-coded characters in *Inside Out*,
 15 therefore, was not something that Disney·Pixar had done before.

16 106. Disney·Pixar continues to enjoy the success of *Inside Out*.

17 107. For instance, Disney·Pixar has generated gross revenue in excess of
 18 \$100,000,000 for DVD and Blu-ray sales of *Inside Out*. And *Inside Out* was the
 19 fourth most downloaded film on iTunes in 2015. Disney·Pixar has distributed,
 20 and continues to distribute, *Inside Out* by DVD, Blu-ray, and Internet-based
 21 downloads and streams.

22 108. Disney·Pixar also generates significant revenue from *Inside Out*
 23 toys, books, and other merchandise.

24 109. Some of this merchandise attempts to capitalize on the perception
 25 that *Inside Out* teaches kids about emotional intelligence. For example:

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10 110. Disney·Pixar would not have enjoyed the extreme success it has
11 had from *Inside Out* without its use of anthropomorphized emotions as its main
12 characters. Specifically, as is the case with *Inside Out*, characters are the most
13 valuable part of an animation property, as they drive the story and become
14 merchandisable entities.

15

Count 1

16

Breach of Implied-in-Fact Contract

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111. Daniels repeats and reallege all allegations set forth above in
paragraphs 1-110 as if they were stated in full and incorporated herein.⁶

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112. Daniels is the exclusive owner of the original idea underlying *The
Moodsters*.

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113. Daniels was aware and relied on customs and practices in the
entertainment industry when she approached Disney·Pixar about a partnership.
Specifically, it is common and custom in the entertainment industry for creators
to provide ideas and materials to producers and studios in exchange for

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⁶ Plaintiff recognizes that the Court has dismissed this claim without leave to amend. Dkt. #47. Plaintiff includes this claim and the allegations (as pleaded in the First Amended Complaint) in order to preserve the claim for appellate review, and to ensure that there is no basis for a claim of waiver.

1 compensation and credit if such ideas or materials are later used.

2 114. Under the circumstances, Daniels disclosed her ideas regarding *The*
 3 *Moodsters* to Disney·Pixar, as is custom and common in the entertainment
 4 industry, with a reasonable expectation that Disney·Pixar would compensate
 5 Daniels if Disney·Pixar used their ideas. Thus, Daniels, individually and
 6 through her team at The Moodsters Company, provided ideas and materials to
 7 Disney·Pixar for sale in exchange for compensation and credit if Disney·Pixar
 8 used such ideas or materials.

9 115. Under the circumstances, and consistent with the custom and
 10 common practice in the entertainment industry, Disney·Pixar accepted the
 11 disclosure of the ideas in *The Moodsters* with an expectation that it would have
 12 to compensate Daniels and The Moodsters Company if Disney·Pixar used this
 13 idea in any television, motion picture, merchandise, or otherwise.

14 116. Neither before nor after any disclosure of ideas and materials did
 15 Disney·Pixar ever tell Daniels, or anyone with her team at The Moodsters
 16 Company, that it may use the ideas and materials provided to Disney·Pixar
 17 without compensation to Daniels and The Moodsters Company.

18 117. Nor did Disney·Pixar ask or require Daniels or her team at The
 19 Moodsters Company to sign a release before accepting the disclosure of ideas
 20 and materials about *The Moodsters*. And yet Disney·Pixar does so in other
 21 circumstances. For instance, Disney hosts a writing program that solicits
 22 original pilot scripts from aspiring writers. One of the requirements for the
 23 program includes a release form that the applicant must sign and attest that “I
 24 waive any right I may have to assert against [Program Writers on Disney
 25 | ABC Television Group (DATG)] and/or the DATG Entities any claim based
 26 on *copyright*, trademark, infringement, confidential relationship, *implied contract*,
 27 unfair competition, *idea theft* or otherwise arising out of any alleged use by
 28 DATG and/or the DATG Entities of the Project, or any element thereof.”

1 Daniels and her team at The Moodsters Company were not asked to sign such
2 a release, and would not have signed such a release (or any comparable one) as
3 a precondition for the disclosure of ideas and materials about *The Moodsters*.

4 118. Based on the circumstances described above, Daniels, and
5 Disney·Pixar have an implied-in-fact contract that requires Disney·Pixar to
6 compensate and credit Daniels and The Moodsters Company for the use of any
7 ideas or materials that Daniels and her team disclosed to Disney·Pixar.

8 119. Disney·Pixar has used Daniels' ideas as shown in *The Moodsters*,
9 which includes a collection of anthropomorphized, color-coded, single-emotion
10 characters through the release and sale of *Inside Out*, and the sale of *Inside Out*
11 merchandise. Disney·Pixar has not compensated Daniels for this use.

12 120. As a result, Disney·Pixar has materially breached, and continues to
13 materially breach, this implied-in-fact contract.

14 121. Daniels has sustained, and continues to sustain, damages as a
15 result of Disney Pixar's material breach. Damages for this harm will be in an
16 amount proven at trial.

Count 2

Copyright Infringement (Ensemble of Characters)

19 122. The Moodsters Company repeats and realleges all allegations set
20 forth above in paragraphs 1-121 as if they were stated in full and incorporated
21 herein.

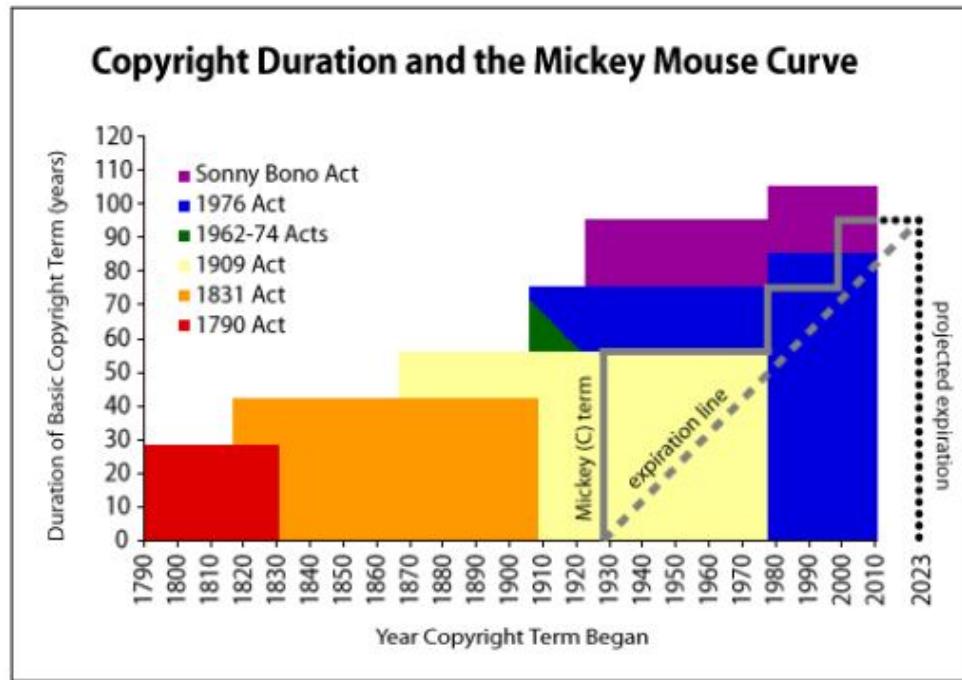
22 123. Congress enacted the Copyright Act to stimulate artistic creativity
23 for the general public good. To achieve this goal, the Copyright Act grants
24 artists the exclusive right to the original expression in their works, which
25 provides them a financial incentive to create works that enrich our culture.

26 124. Disney·Pixar recognizes the importance of copyrights to its
27 business. In its 2016 Annual Report to investors, for instance, Disney·Pixar
28 explains that “[t]he success of our businesses is highly dependent on the

1 existence and maintenance of intellectual property rights in the entertainment
 2 products and services we create.”

3 125. Disney·Pixar is famous for aggressively protecting its works—and
 4 specifically its animated characters—by copyright.

5 126. In 1998, for instance, Disney lobbied heavily for an act—which is
 6 often referred to as the Mickey Mouse Protection Act—that extends the term of
 7 copyright protection. Professor Thomas Bell’s chart shows “the Mickey Mouse
 8 curve,” which reflects Disney’s efforts to extend the duration of copyright terms
 9 every time Disney’s copyright on Mickey Mouse is near expiration:



127. Disney·Pixar has also sought to protect the five-color coded, single
 128 emotion characters in *Inside Out* by copyright.

129 128. Disney·Pixar, for example, sells merchandise with the *Inside Out*
 130 characters, and provides notice to the world that these characters are protected
 131 by copyright:



129. But the Copyright Act does not discriminate between large and
 130. small artists. Copyright law applies equally to large companies, like
 131. Disney·Pixar, and smaller ones, like The Moodsters Company.

132. The Moodsters Company, therefore, brings Count 2, along with
 133. Counts 3-6, to hold Disney·Pixar accountable for its copyright infringement of
 134. *The Moodsters* characters.

135. **The Moodsters Company's Ownership of the Copyrights in *The Moodsters***

136. The Moodsters Company registered the pilot episode of *The*
 137. *Moodsters* with the United States Copyright Office on July 27, 2007 (registration
 138. number PA 1-394-057). *See* Ex. 4.

139. The Moodsters Company registered an initial version of *The*
 140. *Moodsters*' Bible with the United States Copyright Office (registration number
 141. TX 8-389-829) as well.⁷

142. *The Moodsters*, as reflected in *The Moodsters*' Bible and Pilot, is an
 143. original work of authorship fixed in a tangible means of expression that is
 144.

145. ⁷ The Moodsters Company revised and updated *The Moodsters* Bible from
 146. 2005-2008. *See, e.g.*, Exs. 5-7.

1 subject to copyright protection under the Copyright Act.

2 134. The Moodsters Company is the exclusive owner of all copyrights in
 3 *The Moodsters* Bible and *The Moodsters* Pilot.

4 135. The Moodsters Company's exclusive rights extend to all
 5 protectable components of *The Moodsters* described above, which includes the
 6 characters (and the ensemble of characters) in *The Moodsters*.

7 136. The Moodsters Company's exclusive rights in *The Moodsters*
 8 includes the right to create derivative works.

9 137. The characters in *The Moodsters* express the idea of using single
 10 emotions as characters in an entertainment program.

11 **The Ensemble of Moodsters Characters is Protected by Copyright**

12 138. The ensemble of Moodsters characters is protected by copyright.
 13 This group of characters is fundamentally original—the *sine qua non* of
 14 copyright law.

15 139. While Daniels conceived of *The Moodsters* in the early 2000s, the
 16 ensemble of Moodsters characters was created, for purposes of copyright law,
 17 no later than 2005 when they appeared and were described in *The Moodsters*
 18 Bible. Those characters were further refined and developed in *The Moodsters*
 19 Pilot episode in 2007. In both *The Moodsters* Pilot and Bible, the ensemble of
 20 characters was fixed in a tangible medium of expression.

21 140. The ensemble of Moodsters characters is protected by copyright
 22 under either the three-part test applied for animated characters, or the “story
 23 being told” standard.

24 141. Under the Ninth Circuit’s three-part test, characters are protected
 25 by copyright if they (1) have physical as well as conceptual qualities; (2) are
 26 sufficiently delineated to be recognizable as the same character whenever they
 27 appear; and (3) are especially distinctive and contain some unique elements of
 28 expression.

Moodsters characters have physical and conceptual qualities

142. The ensemble of Moodsters characters is not a set of mere literary characters. Rather, the ensemble describes and reflects conceptual characteristics of the characters, as set forth and described in this Second Amended Complaint, and the characters are depicted graphically as well. They demonstrate physical as well as conceptual qualities as a result.

Moodsters characters are sufficiently delineated

143. The traits and attributes of the ensemble of Moodsters characters, as reflected in *The Moodsters* Bible and Pilot, sufficiently delineate these characters so that they are recognizable whenever they appear. These traits and attributes include: a collection of five anthropomorphic animated characters; each character designated by a single emotion, and those emotions being happiness, sadness, anger, fear, and love; each character designated by a core body color, with those colors being yellow, blue, red, green, and pink; each character represented by a single emotion is paired with a single color, including yellow and happiness, blue and sadness, red and anger, green and fear, and pink and love; the collection of characters generally interact as a cohesive group together; the characters are not human but have traits and characteristics of human, are not androgynous, and are not animals or objects; this ensemble of characters reside inside a child; and the traits and attributes of each individual character as set forth throughout this Second Amended Complaint, and the paragraphs below in ¶¶179-92. Based on the expression of these traits and attributes and as they are depicted graphically, the ensemble of Moodsters characters is recognized wherever they appear.

144. The traits in the paragraph above have persisted through—and after—the pilot episode in 2007.

145. The ensemble of Moodsters characters is not lightly sketched in the Bible or the Pilot episode. The graphical depictions of the characters are custom

1 designs based on Daniels' conceptualization. These designs were further refined
 2 in the two-dimensional drawings in the Bible, and then further detailed through
 3 a professional production of the Pilot featuring three-dimensional computer-
 4 generated imagery (CGI).

5 146. Substantial resources were devoted to *The Moodsters* characters. For
 6 instance, over \$3.3M was invested in Moodsters Co. The primary business
 7 focus of Moodsters Co. was the development and licensing of an entertainment
 8 program, toys, books, and other items centered on the ensemble of Moodsters
 9 characters, in order to build a multi-media educational and entertainment
 10 platform for children.

11 147. The characters in *The Moodsters* Pilot episode were further refined
 12 through the professional and academic guidance and analysis from Professor
 13 Bracket and his colleague, Professor Susan E. Rivers. Through their work, as
 14 preeminent experts in the field of emotional intelligence and co-founders of the
 15 Yale Center for Emotional Intelligence, they advised Moodsters Co. about the
 16 script and attributes and traits of the characters, including suggesting facial
 17 expressions and dialogue for particular characters based on their review and
 18 interpretation of scientific research on emotions.

19 148. Part of their work included focus groups with children and their
 20 parents, across socioeconomic backgrounds, who watched a version of the
 21 Pilot. The results demonstrated that children understood and enjoyed the show.
 22 96% of children liked the show, and 82% said they wanted to watch more
 23 shows about *The Moodsters*. Parents liked *The Moodsters* as well.

24 149. The focus groups demonstrated that the children liked *The*
 25 *Moodsters* characters. Specifically, 100% of respondents liked the Fear character;
 26 92% liked the Happy character; 88% liked the Anger character; 88% liked the
 27 Sadness character; and 88% liked the Love character.

28 150. Professor Brackett later wrote a letter of support for the *The*

1 *Moodsters* because he believed that *The Moodsters* had the potential to make a
 2 significant difference in the personal and social lives of millions of children. Ex.
 3 8.

4 151. Unlike lightly sketched characters in a literary screenplay, *The*
 5 *Moodsters* characters were assessed and tested by preeminent experts at Yale
 6 University.

7 152. The late Dr. Pert, the internationally recognized neuroscientist and
 8 author of the book *Molecules of Emotion*, reviewed materials about the *The*
 9 *Moodsters* characters, and concluded that “The Moodsters are literally teaching
 10 children to control their own brain chemistries.”

11 153. Moodsters Co. also discussed *The Moodsters* characters, including
 12 the merchandising potential of *The Moodsters* characters, with a number of
 13 major entertainment, toy, and publishing companies. These companies
 14 included Disney, PBS, Toys “R” Us, Nickelodeon, Scholastic Publishing,
 15 Manhattan Toy Company, among others. Internal research conducted at the
 16 Moodsters Company in 2007 demonstrated that the licensing industry
 17 accounted for approximately \$180 billion in worldwide retail sales, of which
 18 character licensing accounted for \$41 billion of those sales. Nonetheless, the
 19 dominance of Disney and Nickelodeon in media for the relevant demographic
 20 affected the ability of other market entrants, such as the Moodsters Co., to
 21 place products at retail. Moodsters Co., therefore, sought a partnership with the
 22 companies above to bring *The Moodsters* characters to market.

23 154. None of the companies listed above expressed critique or concern
 24 that *The Moodsters* characters were generic, lightly sketched, lacked distinctive
 25 qualities, or were otherwise not sufficiently delineated as a specific, unique, and
 26 original group of characters. To the contrary, Moodsters Co. received positive
 27 feedback about the uniqueness of *The Moodsters* characters.

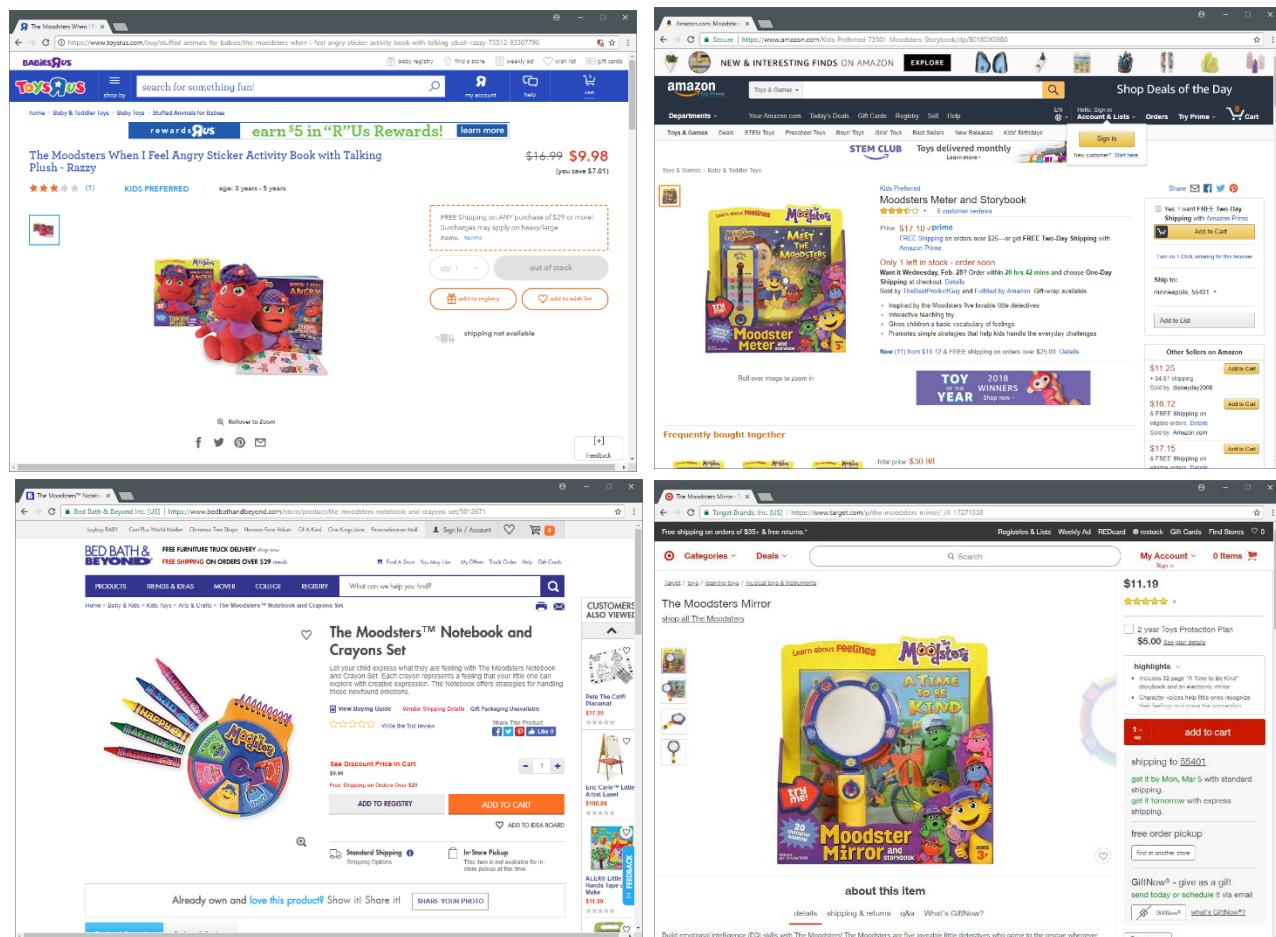
28 155. Moodsters Co. has also retained Professor Maureen Furniss to

1 serve as an expert witness in connection with this matter. Professor Furniss is a
2 senior faculty member and the program director of Experimental Animation at
3 California Institute of the Arts (CalArts), where she teaches a range of
4 animation history courses. Her curriculum vitae is attached as Exhibit 9. If
5 given the opportunity to complete an analysis and testify in this action,
6 Professor Furniss would expound on and opine that *The Moodsters* characters
7 are sufficiently developed to establish the characters' agency to engage and
8 drive a narrative or story.

9 156. While Moodsters characters, along with their unique and original
10 traits and attributes, were introduced in the Bible and Pilot, *The Moodsters*
11 characters continue to this day. A second generation of *The Moodsters* characters
12 were developed in the 2012-13 time frame. These characters are shown below:



1 Updated versions of animated characters is common in the industry; Mickey
 2 Mouse is a good example. By 2015, various products, including toys and books
 3 featuring *The Moodsters* characters, became available for sale at Target, and then
 4 later on national and international platforms such as Amazon.com, Toys "R"
 5 Us, Walmart, Barnes and Noble, AAFES (Army Air Force Exchanges), and
 6 JCPenney. For instance



23 Before these Moodsters character products were available for sale, moreover,
 24 thousands of Moodsters toys and books were donated to schools, disaster relief
 25 programs, NGOs, and children's hospitals.

26 157. The second generation Moodsters characters above have been
 27 recognized with a number of awards and recognitions, such as through the
 28 Parents' Choice Foundation, the 2015 National Parenting Publications Awards

1 (Bronze Winner), The National Parenting Center Seal of Approval, and 2016
 2 Dr. Toy 100 Best:



9 The second generation Moodsters characters above have also been featured by
 10 MSN.com, The Today Show, *The Huffington Post*, KTLA5, Macaroni Kid, and
 11 Latina.com, among other media outlets and organizations.

12 158. The following traits and attributes from the first generation of
 13 Moodsters characters have persisted in the second generation: collection of five
 14 anthropomorphic animated characters; each character designated by a single
 15 emotion, and those emotions being happiness, sadness, anger, fear, and love;
 16 each character designated by a core body color, and those colors being yellow,
 17 blue, red, green, and pink; each character has a single-emotion paired with a
 18 single color, including yellow and happiness, blue and sadness, red and anger,
 19 green and fear, and pink and love; the collection of characters generally interact
 20 as a cohesive group together; the characters are not human but have traits and
 21 characteristics of humans, and which are not animals or objects; and the traits
 22 and attributes of each individual character as set forth throughout this Second
 23 Amended Complaint.

24 **The Ensemble of Moodsters Characters is Especially Distinctive**

25 159. The ensemble of Moodsters characters is not a collection of stock
 26 characters.

27 160. Stock characters have an important historical background in
 28 animated films. If given the opportunity to complete an analysis and testify in

1 this action, Professor Furniss will provide this historical perspective of the role
2 of the stock character. In short, in the earliest years of animation, it was
3 common for films to have several groups of multiple characters, such as dogs
4 and lions, which were not differentiated visually or otherwise. In other words,
5 all dogs were identical. A well-known example of stock characters is from the
6 Fleischer studio's production of *Snow White* in 1933. This version of *Snow*
7 *White*, four years before Disney's version, featured Betty Boop in the role of
8 *Snow White*. The film also included seven dwarfs. But unlike Disney's version
9 of the dwarfs most people are familiar with today, these dwarfs were all
10 identical looking. They had no original or unique traits or attributes. These
11 dwarfs were stock characters.

12 161. Disney was one of the first animation studios to break away from
13 stock characters. In 1937, for instance, Disney released its version of *Snow*
14 *White and Seven Dwarfs*. Unlike the Fleischer version, Disney made each dwarf
15 its own distinctive character. While the dwarfs are similar in terms of size and
16 shape, their personalities come through their named attributes; for example, the
17 Sneezy dwarf is always sneezing and the Bashful dwarf is very shy. Notably,
18 these individualized traits and characteristics come through in the movie.
19 Nevertheless, the individual dwarfs are not always instantly recognizable to the
20 ordinary observer, as some times in the film they looked indistinguishable, such
21 as shown below:



22
23
24
25
26
27 162. The seven dwarfs in Disney's *Snow White* are an example of
28 animated characters protected by copyright.

1 163. The ensemble of *Moodsters* characters is not a set of stock
2 characters. Each character is unique and individual, and the ensemble of those
3 characters is unique and individual as a group. As set forth above, Disney had
4 never before distributed a film or show that featured a collection of five
5 animated characters that each represented a single emotion, let alone a
6 collection of single-emotion characters with the particular traits and attributes
7 of *The Moodsters* characters.

8 164. *Moodsters* Co. is not aware of any other previous animated works
9 that featured a collection of five characters each represented by a single
10 emotion. Nor is it aware of any previous animated works that featured five
11 characters that each represented a single emotion that included the emotions of
12 happiness, sadness, anger, fear, and love. *Moodsters* Co. is similarly unaware
13 of any previous animated works that featured five characters each representing
14 a single emotion and designated by core body colors linked to each emotion,
15 including yellow for happiness, blue for sadness, red for anger, green for fear,
16 and pink for love. Furthermore, as set forth in paragraphs 179-92 below, there
17 are a range of options for expressing the idea of single emotion characters; the
18 particular attributes and traits associated with *The Moodsters* characters
19 underscore the uniqueness of these characters. For these reasons, among others,
20 the ensemble of *Moodsters* characters are not general, stereotypical, or stock
21 characters. To the contrary, the originality of these characters distinguish this
22 ensemble from ensembles of characters outside of *The Moodsters*, which renders
23 *The Moodsters* characters especially distinctive and containing unique elements
24 of expression.

25 165. Professor Furniss agrees with the allegations set forth in paragraph
26 164 based on her analysis to date. If given the opportunity to complete an
27 analysis and testify in this action, Professor Furniss will further analyze and
28 opine on the history of animated works, and address the unique elements of

1 expression and especially distinctive characteristics of the collection of
 2 Moodsters characters compared to other characters in works that predated *The*
 3 *Moodsters*.

4 **The Ensemble of *The Moodsters* Characters is the Story Being Told**

5 166. The ensemble of Moodsters characters is protected by copyright
 6 because the ensemble is the story being told.

7 167. The story arc for Moodsters Co.'s episodes featuring *The Moodsters*
 8 characters, including in the Pilot and as set forth in the Bible, confirm that this
 9 ensemble is the story being told. The title of the program *is* the characters: *The*
 10 *Moodsters*. The story arc for each episode with *The Moodsters* ensemble involves
 11 some event, which causes emotional reactions to the event, and then an
 12 understanding of the emotion and how to manage that feeling. The "event" is
 13 collateral to the ensemble of characters. Neither the pilot episode, nor any of
 14 the proposed future episode story lines, would make sense without the
 15 ensemble of Moodsters characters. *The Moodsters* only exists because of *The*
 16 *Moodsters* characters.

17 **Disney·Pixar's *Inside Out* Infringes Moodsters Co.'s Copyright**

18 168. Disney·Pixar had access to *The Moodsters* before it started working
 19 on the movie *Inside Out* in 2010.

20 169. Nancy Kanter had access to *The Moodsters* before Disney·Pixar
 21 started working on the movie *Inside Out* in 2010.

22 170. Paula Rosenthal had access to *The Moodsters* before Disney·Pixar
 23 started working on the movie *Inside Out* in 2010.

24 171. Rich Ross had access to *The Moodsters* before Disney·Pixar started
 25 working on the movie *Inside Out* in 2010.

26 172. Thomas Staggs had access to *The Moodsters* before Disney·Pixar
 27 started working on the movie *Inside Out* in 2010.

28 173. Roy E. Disney had access to *The Moodsters* before Disney·Pixar

1 started working on the movie *Inside Out* in 2010.

2 174. Pete Docter had access to *The Moodsters* before Disney·Pixar started
 3 working on the movie *Inside Out* in 2010.

4 **Disney·Pixar's *Inside Out* Copied *The Moodsters* Ensemble of Characters**

5 175. Disney·Pixar's *Inside Out* infringes protectable and original
 6 components of *The Moodsters*, including the expression of a collection of five,
 7 anthropomorphized, color-coded, single emotion characters as represented in
 8 *The Moodsters*, specifically, the ensemble of the Happy character, the Sadness
 9 character, the Anger character, the Fear character, and the Love character.

10 176. The expressive elements of the ensemble of characters in *The*
 11 *Moodsters* include but are not limited to: a collection of anthropomorphized
 12 animated characters, with each character designated by a single emotion, and
 13 those emotions being happiness, sadness, anger, fear, and love; with each
 14 character designated by a core body color, and those colors being yellow, blue,
 15 red, green, and pink; with each character having a single emotion paired with a
 16 core body color, including characters pairing yellow and happiness, blue and
 17 sadness, red and anger; the collection of characters generally interact as a
 18 cohesive group; these characters are not human but have traits and
 19 characteristics of humans, they are not androgynous, and they are not animals
 20 or objects; the collection of characters reside inside a child; and the traits and
 21 attributes of each individual character as set forth throughout this Second
 22 Amended Complaint.

23 177. These elements, individually and as a selection, coordination, and
 24 arrangement, are protectable and original elements of *The Moodsters*
 25 Company's copyright in *The Moodsters*, as set forth in the ensemble of
 26 characters.

27 178. To be sure, neither these elements in paragraph 176—individually
 28 or as a combination—nor the ensemble of characters in full can be considered

1 *scènes à faire*. *Scènes à faire* is a doctrine in copyright law that refers to the notion
2 that less copyright protection is afforded to expressions that are practically
3 indispensable or standard in the treatment of a topic. *Scènes à faire* is literally
4 translated to “scenes which must be done.”

Anthropomorphic Emotions as Characters

6 179. As a threshold matter, Disney·Pixar has never before
7 anthropomorphized emotions as an ensemble of characters in any of its major
8 motion pictures.

9 180. Nor do Disney's short films serve as an example of
10 anthropomorphizing emotions as characters. Disney's short film *Reason and*
11 *Emotion* (1943) demonstrates an attempt at personifying abstractions, like the
12 ability to think and feel, but it does not portray single emotions as characters. In
13 this short film, the Reason character is defined as the ability to think, and the
14 Emotion character is defined as the ability to feel.



24 Neither of the main characters represents a singular emotion. To the contrary,
25 as the short film depicts Hitler in Nazi Germany, the Emotion character
26 expresses at least the emotions of fear, pride, hate, and sympathy. Thus, while
27 *Reason and Emotion* does not feature single emotion characters, it confirms that
28 a variety of approaches and options exist to personify abstractions, as set forth

1 further below.

2 181. More fundamentally, however, that Disney·Pixar, the world's most
 3 recognized and successful company that makes and distributes animated films,
 4 had never before expressed the idea of an ensemble of single emotions as
 5 characters supports the conclusion that there is no indispensable or standard
 6 treatment of how these characters should be grouped, colored, located, or
 7 depicted.

8 182. It was not indispensable or standard for an entertainment program
 9 about single-emotion characters to use *The Moodsters* anthropomorphic figures
 10 with human traits and characteristics. For instance, other artists had previously
 11 attempted to portray abstract concepts (although not emotions) through live-
 12 action (as opposed to animation) human characters inside a person's head. The
 13 television show *Herman's Head* (four human characters represented different
 14 aspects of the main character's personality); the 2015 Japanese movie, *Poison*
 15 *Berry in my Brain* (a 30-year-old woman had five different human characters in
 16 her head that governed her actions); and, Disney's *Cranium Command* ride at
 17 Epcot Theme Park (different parts of the body were represented by human
 18 characters) are examples:



183. Nor was *The Moodsters* or Disney·Pixar limited to live-action

1 characters as a means to personify emotions. For instance, the characters
 2 representing emotions could have been depicted as animals:

3
4 Happy
56 Sadness
78 Anger
910 Fear
1112 Love
13

14 Alternatively, *The Moodsters* or *Inside Out* characters could have been expressed
 15 as inanimate objects brought to life, as Disney·Pixar is famous for in its *Toy
 16 Story* and *Cars* series of movies. And yet another option would have been to
 17 express the emotions as some real-world phenomena or occurrence:

18 Happy
19Sadness
14Anger
15Fear
1617 Love
18

19 Emotions, as abstract concepts, are neither male nor female. Even
 20 Disney·Pixar's own consultant for *Inside Out*, Professor Dacher Keltner,
 21 acknowledged that Disney·Pixar considered androgynous characters, which
 22 Keltner considered more realistic. But Disney·Pixar decided to use male and
 23 female characters, as with *The Moodsters* characters.

24 184. Docter's admission that expressing abstract emotions was
 25 challenging for him confirms that anthropomorphizing emotions as animated
 26 characters in *The Moodsters* was not standard or generic in any way.

27 **Selection and Expression of Particular Emotions**
 28

1 185. It was not indispensable or standard for an entertainment program
2 with emotions as characters to use happiness, sadness, anger, fear, and love as
3 the emotions to serve as characters, as in *The Moodsters*. For instance,
4 Disney·Pixar considered a number of other emotions to select in *Inside Out*,
5 including pride, hope, envy, ennui, schadenfreude, awe, surprise, confusion,
6 among others.

7 186. The scientific community, as acknowledged by Disney·Pixar, lacks
8 a consensus on the identification of emotions. By way of example, Professors
9 Andrew Ortony and Terence Turner compiled several different theorists' lists of
10 emotions in their article *What's Basic About Basic Emotions?*, published in
11 PSYCHOLOGICAL REVIEW in 1990. These lists varied widely. One theorist, for
12 instance, identified only happiness and sadness. Another theorist listed anger,
13 aversion, courage, dejection, desire, despair, fear, hate, hope, love, and sadness.
14 Others had their own variations on the total number of emotions, as well as the
15 particular identification of emotions. Disney·Pixar has recognized that another
16 theorist identified 27 emotions. Disney·Pixar's own consultant for *Inside Out*,
17 Keltner, believes there are 20 emotions. And Aristotle set forth his list of
18 emotions in Book II of *Rhetoric*, in which he identified anger, mildness, love,
19 emnity, fear, confidence, shame, shamelessness, benevolence, pity, indignation,
20 envy, emulation, and contempt.

187. Another option for selecting emotions as characters was one
explained by Keltner. For instance, Keltner suggested that he hopes a sequel to
Inside Out will feature Riley as an 18-year-old girl with the following emotions
as characters: sexual desire, triumph, awe, and amusement. Such a suggestion
further confirms that it was not indispensable or standard for a work about
emotions to use happiness, sadness, anger, fear, and love as the emotions to
serve as characters, as in *The Moodsters*.

Selection and Expression of the Number of Emotions

1 188. It was not indispensable or standard to an entertainment program
2 with emotions as characters to select five emotions as the number of emotions
3 to use as characters. For instance, Disney·Pixar considered a range of numbers
4 of emotions for *Inside Out*, including upwards of at least 27 different emotions.
5 And as set forth above, there is significant dispute and uncertainty as to how
6 many emotions exist. It cannot be the case, therefore, that an entertainment
7 program with emotions as characters would be naturally or inherently limited
8 to five emotions.

Use and Expression of a Core Color per Emotion

10 189. It was not indispensable or standard to an entertainment program
11 with emotions as characters to designate each character with a core color. For
12 instance, emotions are frequently expressed in today's culture without *any*
13 unique color associated with a particular emotion:



18 In July 2017, for instance, Sony Pictures Animation released *The Emoji Movie*,
19 which featured emoticons as characters.

20 190. Nor was it indispensable or standard for *The Moodsters* to select
21 particular colors to correspond with particular emotions. Dr. Seuss' well-known
22 and popular *My Many Colored Days* book is emblematic. Dr. Seuss wrote this
23 book in 1973 about feelings and moods. Unlike *The Moodsters'* (and *Inside Out's*)
24 Anger character who is red, *My Many Colored Days* portrays a red horse to show
25 how "good it feels" to be a horse. And blue does not portary sadness; purple
26 does. Blue instead demonstrates optimism as a bird "flap[s] my wings." Happy
27 days are not yellow but pink, and anger is depicted with a black bear. Dr.
28 Seuss' book confirms that the particular selection of colors that match

1 characters as in *The Moodsters* is not something that “must be done” or that
2 which is indispensable or standard to the work.

3 191. The particular expression of the idea in *The Moodsters* to assign core
4 colors with single emotion characters (*i.e.*, yellow for happiness, blue for
5 sadness, red for anger, green for fear, and pink for love) was not generic,
6 indispensable, or standard, particularly because of the limited and particular
7 emotions that were selected. For instance, red could be associated not only with
8 anger, but also with love and lust. Blue could represent sadness, as well as trust
9 and peace. And yellow can represent happiness, as well as cowardice which is a
10 trait based on fear. The originality of the selection of particular colors,
11 therefore, must be considered in connection with the use of a core color per
12 emotion as well as the original selection of a limited, specific set of emotions.
13 For instance, if Disney·Pixar had used 27 different emotions as characters (as it
14 had considered), then it would be unable to represent each of those characters
15 by a core, distinctive color.

The Selection, Coordination, and Arrangement of Unique Expressive Elements

18 192. The unique expressive elements within the characters of *The*
19 *Moodsters*, set forth above, are each independently original and not *scènes à faire*.
20 The combination of these unique expressive elements, moreover, is original and
21 anything but indispensable and standard for an entertainment program with
22 emotions as characters. The originality of such elements is reflected in the fact
23 that before *Inside Out*, Disney·Pixar had never before released a film with these
24 combination of elements.

26 193. Disney·Pixar's *Inside Out* copied protectable and original
27 components of The Moodsters Company's copyright in *The Moodsters*,
28 including the ensemble of characters. Disney·Pixar's *Inside Out*, for instance,

1 includes a collection of five anthropomorphized color-coded, single emotion
 2 characters, which include Joy (designated by the color yellow); Sadness
 3 (designated by the color blue); Anger (designated by the color red); and Fear
 4 (designated by the color purple). This ensemble of characters, as set forth herein
 5 and in the paragraphs above, is substantially similar to the protectable and
 6 original components of the collection of characters in *The Moodsters*.

7 194. Third-party information on Amazon.com indicates an overlap in
 8 sales of *Moodsters* and *Inside Out* merchandise. Customers who purchased *The*
 9 *Moodsters* Moodster Meter and Storybook, for example, also purchased the
 10 *Inside Out* Box of Mixed Emotions:



19 195. Through the release of *Inside Out*, and the sales of *Inside Out*
 20 merchandise, Disney·Pixar has directly, contributorily, and vicariously
 21 infringed The Moodsters Company's protectable components of its copyright in
 22 *The Moodsters*.

23 196. By virtue of Disney·Pixar's infringement, The Moodsters Company
 24 is entitled to recover its actual damages and Disney·Pixar's profits in an amount
 25 to be proved at trial (or in the alternative statutory damages), its attorneys' fees
 26 and costs, and all other relief allowed under the Copyright Act.

27 **Count 3**

28 **Copyright Infringement (the Happy character)**

1 197. The Moodsters Company repeats and realleges all allegations set
2 forth above in paragraphs 1-196 as if they were stated in full and incorporated
3 herein.

4 198. One protectable component within The Moodsters Company's
5 copyright in *The Moodsters* is the Happy character. The Moodsters Company is
6 the exclusive owner to all rights in the copyright to the Happy character of *The*
7 *Moodsters*, as described above.

8 199. The Happy character is an anthropomorphized animated character
9 that represents the single emotion of happiness, and that is designated by the
10 core body color of yellow.

11 200. The Happy character is quite optimistic and enthusiastic. The other
12 Moodsters depend on him when things get tough. The Happy character is the
13 leader of *The Moodsters*.

The Happy Character is Protected by Copyright

15 201. The Happy Character of *The Moodsters* is protected by copyright.
16 The Happy character is fundamentally original—the *sine qua non* of copyright
17 law.

18 202. The Happy character of Moodsters was created, for purposes of
19 copyright law, no later than 2005 when the character appeared and was
20 described in *The Moodsters* Bible. The Happy character was further refined and
21 developed in *The Moodsters* Pilot episode in 2007. In both *The Moodsters* Pilot
22 and Bible, the Happy character was fixed in a tangible medium of expression.

23 203. The Happy character is protected by copyright under both the
24 three-part test applied for animated characters. Under the Ninth Circuit's three-
25 part test, characters are protected by copyright if they (1) have physical as well
26 as conceptual qualities; (2) are sufficiently delineated to be recognizable as the
27 same character whenever they appear; and (3) are especially distinctive and
28 contain some unique elements of expression.

The Happy character from *The Moodsters* has physical and conceptual qualities

3 204. The Happy character of Moodsters is not a mere literary character.
4 Rather, the Happy character describes and reflects conceptual characteristics of
5 the character, as set forth and described in this Second Amended Complaint,
6 and the character is depicted graphically as well. The Happy character
7 demonstrates physical as well as conceptual qualities as a result.

The Happy character is sufficiently delineated

9 205. The traits and attributes for the Happy character, as reflected in *The*
10 *Moodsters* Bible and Pilot, sufficiently delineate this character so that the
11 character is recognizable whenever it appears. These traits and attributes
12 include, but are not limited to, the Happy character is an anthropomorphic
13 animated character represented by the single emotion of happiness; the Happy
14 application of yellow as the Happy character's core body color; the Happy
15 character's optimistic and enthusiastic attitude; the leadership role that he
16 maintains within the ensemble of four other characters each represented by the
17 single emotions sadness, anger, fear, and love, and each which is represented by
18 a core body color of blue, red, green, and pink, respectively; that the Happy
19 character is not human but has traits and characteristics of humans, is not
20 androgynous, and is not an animal or object; that the Happy character resides
21 inside a child, along with the other four characters represented by a single
22 emotion and a core body color. Based on the expression of these traits and
23 attributes, and as the Happy character is depicted graphically, the Happy
24 character is recognized wherever it appears.

25 206. The traits in the paragraph above have persisted from creation
26 through the pilot episode in 2007.

27 207. The Happy character of *The Moodsters* is not lightly sketched in the
28 Bible or the Pilot episode. The graphical depictions of the Happy character are

1 custom designs based on Daniels' conceptualization. These designs were
 2 further refined in the two-dimensional drawings in the Bible, and then further
 3 detailed through a professional production of the Pilot featuring three-
 4 dimensional computer-generated imagery (CGI).

5 208. Substantial resources were devoted to *The Moodsters* characters,
 6 including the Happy character. For instance, over \$3.3M was invested in
 7 Moodsters Co. The primary business focus of Moodsters Co. was the
 8 development and licensing of an entertainment program, toys, books, and other
 9 items centered on the ensemble of Moodsters characters, including the Happy
 10 character, in order to build a multi-media educational and entertainment
 11 platform for children.

12 209. The characters in *The Moodsters* Pilot episode, including the Happy
 13 character, was further refined through the professional and academic guidance
 14 and analysis from Professor Bracket and his colleague, Professor Susan E.
 15 Rivers. Through their work, as preeminent experts in the field of emotional
 16 intelligence and co-founders of the Yale Center for Emotional Intelligence, they
 17 advised Moodsters Co. about the script and attributes and traits of the
 18 characters, including suggesting facial expressions and dialogue for particular
 19 characters based on their review and interpretation of scientific research on
 20 emotions.

21 210. Part of their work included focus groups with children and their
 22 parents who watched a version of the Pilot. The results demonstrated that
 23 children understood and enjoyed the show. 96% of children liked the show, and
 24 82% said they wanted to watch more shows about *The Moodsters*. Parents liked
 25 *The Moodsters* as well.

26 211. The focus groups demonstrated that the children liked *The*
 27 *Moodsters* characters. Specifically, 92% liked the Happy character.

28 212. Unlike lightly sketched characters in a literary screenplay, *The*

1 *Moodsters* characters, including the Happy character, was assessed and tested by
2 preeminent experts at Yale University.

3 213. Moodsters Co. also discussed *The Moodsters* characters, including
4 the merchandising potential of *The Moodsters* characters, with a number of
5 major entertainment, toy, and publishing companies. These companies
6 included Disney, PBS, Nickelodeon, Scholastic Publishing, Manhattan Toy
7 Company, among others. Internal research conducted at *The Moodsters*
8 Company in 2007 demonstrated that the licensing industry accounted for
9 approximately \$180 billion in worldwide retail sales, of which character
10 licensing accounted for \$41 billion of those sales. Nonetheless, the dominance
11 of Disney and Nickelodeon in media for the relevant demographic affected the
12 ability of other market entrants to place products at retail. Moodsters Co.,
13 therefore, sought a partnership to bring *The Moodsters* characters to market.

14 214. None of the companies listed above expressed critique or concern
15 that *The Moodsters* characters in general, or the Happy character specifically,
16 were generic, lightly sketched, lacked distinctive qualities, or were otherwise
17 not sufficiently delineated as a specific, unique, and original group of
18 characters. To the contrary, Moodsters Co. received positive feedback about the
19 uniqueness of *The Moodsters* characters, which included the Happy character.

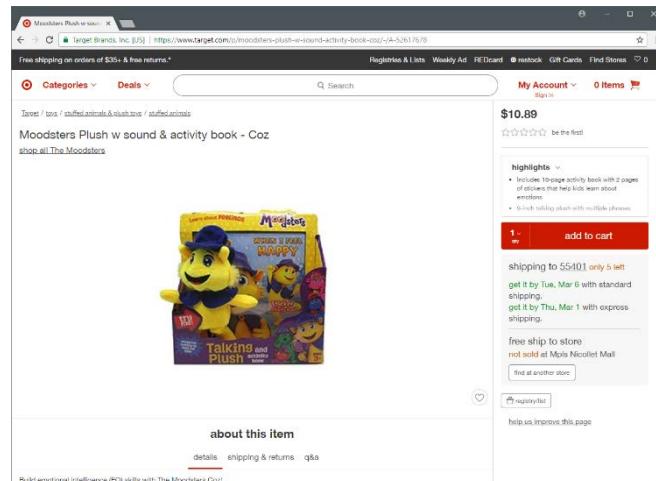
20 215. Moodsters Co. has also retained Professor Maureen Furniss to
21 serve as an expert witness in connection with this matter. If given the
22 opportunity to complete an analysis and testify in this action, Professor Furniss
23 would expound on and opine that the Happy character is sufficiently developed
24 to establish the character's agency to engage and drive a narrative or story.

25 216. While Happy character in *The Moodsters* characters, along with his
26 unique and original traits and attributes, was introduced in the Bible and Pilot,
27 the Happy character continues to this day. A second generation of *The*
28 *Moodsters* characters were developed in the 2012-13 time frame. The Happy

1 character is shown below:



10 By 2015, various products, including toys and books featuring the Happy
 11 character, became available for sale—and were sold—at Target, and then later
 12 on national and international platforms such as Amazon.com, Toys “R” Us,
 13 Walmart, Barnes and Noble, AAFES (Army Air Force Exchanges), and
 14 JCPenney. For instance



23 Before these Moodsters character products were available for sale, moreover,
 24 thousands of Moodsters toys and books, which included the Happy character,
 25 were donated to schools, disaster relief programs, NGOs, and children's
 26 hospitals

27 217. The following traits and attributes from the first generation of
 28 Moodsters characters have persisted in the second generation: the Happy

1 character is an animated character represented by the single emotion of
 2 happiness; the application of yellow as the Happy character's core body color;
 3 the leadership role that he maintains within the ensemble of four other
 4 characters each represented by the single emotions of sadness, anger, fear, and
 5 love, and each which is represented by a core body color of blue, red, green,
 6 and pink, respectively; that the Happy character is not human but has traits and
 7 characteristics of humans, is not androgynous, and is not an animal or object.

8 **The Happy Character is especially distinctive**

9 218. The Happy Character in *The Moodsters* is not a stock character.
 10 219. Stock characters have an important historical background in
 11 animated films. If given the opportunity to complete an analysis and testify in
 12 this action, Professor Furniss will provide this historical perspective of the role
 13 of the stock character. In short, in the earliest years of animation, it was
 14 common for films to have several groups of multiple characters, such as dogs
 15 and lions, which were not differentiated visually or otherwise. In other words,
 16 all dogs were identical. A well-known example of stock characters is from the
 17 Fleischer studio's production of *Snow White* in 1933. This version of *Snow*
 18 *White*, four years before Disney's version, featured Betty Boop in the role of
 19 *Snow White*. The film also included seven dwarfs. But unlike Disney's version
 20 of the dwarfs most people are familiar with today, these dwarfs were all
 21 identical looking. They had no original or unique traits or attributes. These
 22 dwarfs were stock characters.

23 220. Disney was one of the first animation studios to break away from
 24 stock characters. In 1937, for instance, Disney released its version of *Snow*
 25 *White and Seven Dwarfs*. Unlike the Fleischer version, Disney made each dwarf
 26 its own distinctive character. While the dwarfs are similar in terms of size and
 27 shape, their personalities come through their named attributes; for example, the
 28 Sneezy dwarf is always sneezing and the Bashful dwarf is very shy. Notably,

1 these individualized traits and characteristics come through in the movie.
 2 Nevertheless, the individual dwarfs are not always instantly recognizable to the
 3 ordinary observer, as some times in the film they looked indistinguishable, such
 4 as shown below:



10 221. The Happy character is not a stock character. The Happy character
 11 is unique and individual, and maintains a specific role within the ensemble of
 12 Moodsters characters. As set forth above, Disney had never before distributed a
 13 film or show that featured a collection of five single-emotion characters, which
 14 included a Happy character with the particular traits and attributes of the
 15 Happy character in *The Moodsters*.

16 222. Moodsters Co. is not aware of any other previous animated works
 17 that featured a collection of five characters each represented by a single
 18 emotion, which included a character represented by the single emotion of
 19 happiness. Moodsters Co. is similarly unaware of any previous animated works
 20 that featured five characters each represented by a single emotion and
 21 designated by core body colors linked to each emotion, of which the Happy
 22 character designated by the core body color yellow, interacts cohesively with
 23 four other characters each represented by a single emotion and corresponding
 24 core body color. Furthermore, as set forth in paragraphs 179-92 above, there
 25 are a range of options for expressing the idea of single emotion characters,
 26 including a Happy character; the particular attributes and traits expressed in the
 27 Happy character underscore the uniqueness of this character. For these reasons,
 28 among others, the Happy character of *The Moodsters* is not a general,

1 stereotypical, or stock character. To the contrary, the originality of this
 2 character distinguishes the Happy character from animated characters outside
 3 of *The Moodsters*, which renders the Happy character especially distinctive and
 4 containing unique elements of expression.

5 223. Professor Furniss agrees with the allegations set forth in paragraph
 6 222 based on her analysis to date. If given the opportunity to complete an
 7 analysis and testify in this action, Professor Furniss will further analyze and
 8 opine on the history of animated works, and address the unique elements of
 9 expression and especially distinctive characteristics of the collection of
 10 Moodsters characters compared to other characters in works that predated *The*
 11 *Moodsters*.

12 **Disney·Pixar's *Inside Out* Copied *The Moodsters* Happy Character**

13 224. Disney·Pixar had access to *The Moodsters*, including the Happy
 14 character, before Disney·Pixar started to work on *Inside Out* in 2010.

15 225. Disney·Pixar's *Inside Out* infringes The Moodsters Company's
 16 protectable components of *The Moodsters*, and specifically the Happy character.

17 226. The unique expressive elements of the Happy character include but
 18 are not limited to: an anthropomorphized animated character represented by
 19 the single emotion of happiness; the application of yellow as the Happy
 20 character's core body color; an expressive optimistic and enthusiastic attitude;
 21 the leadership role that he maintains within the ensemble of four other
 22 characters, each of which is represented by a single emotion, including sadness,
 23 anger, fear and love, and each of which is represented by a core body color of
 24 blue, red, green, and pink, respectively; that the Happy character is not human
 25 but has traits and characteristics of humans, is not androgynous, and is not an
 26 animal or object; that the Happy character resides inside a child along with the
 27 other four characters represented by a single emotion and color.



227. These elements, individually and as a selection, coordination, and arrangement, are protectable and original elements of The Moodsters Company's copyright in *The Moodsters*, as set forth in the Happy character.

228. These elements, individually or in combination, are not scènes à faire.

229. Before *Inside Out*, Disney had never before released a film with an anthropomorphized character that represented the single emotion of happiness/joy, and that was designated by the core body color of yellow.

230. *Inside Out*'s Joy character is colored yellow, and one of five main characters in the movie. Joy's goal has always been to make sure Riley stays happy. She sees life's challenges as opportunities, and the sad bits as hiccups on the way back to something great. Hope and optimism dictate all of her decisions. Joy is the leader of the other emotions in *Inside Out*, as the other



1 emotions rely on Joy when things get tough.

2 231. Disney·Pixar's *Inside Out* copied protectable and original
3 components of The Moodsters Company's copyright in the Happy character in
4 *The Moodsters*. The Joy character in Disney·Pixar's *Inside Out*, as set forth herein
5 and in the paragraphs above, is substantially similar to the protectable and
6 original components of the Happy character in *The Moodsters*.



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14 232. Through the release of *Inside Out*, and the sales of *Inside Out*
15 merchandise, Disney·Pixar has directly, contributorily, and vicariously
16 infringed The Moodsters Company's protectable and original components of its
17 copyright in *The Moodsters*, including the Happy character.

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22 233. By virtue of Disney·Pixar's infringement, The Moodsters Company
is entitled to recover its actual damages and Disney·Pixar's profits in an amount
to be proved at trial (or in the alternative statutory damages), its attorneys' fees
and costs, and all other relief allowed under the Copyright Act.

23 Count 4

24 Copyright Infringement (the Sadness character)

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27 234. The Moodsters Company repeats and realleges all allegations set
forth above in paragraphs 1-233 as if they were stated in full and incorporated
herein.

28 235. One protectable component within The Moodsters Company's

1 law.

2 239. The Sadness character of Moodsters was created, for purposes of
 3 copyright law, no later than 2005 when the character appeared and was
 4 described in *The Moodsters* Bible. The Sadness character was further refined and
 5 developed in *The Moodsters* Pilot episode in 2007. In both *The Moodsters* Pilot
 6 and Bible, the Sadness character was fixed in a tangible medium of expression.

7 240. The Sadness character is protected by copyright under both the
 8 three-part test applied for animated characters. Under the Ninth Circuit's three-
 9 part test, characters are protected by copyright if they (1) have physical as well
 10 as conceptual qualities; (2) are sufficiently delineated to be recognizable as the
 11 same character whenever they appear; and (3) are especially distinctive and
 12 contain some unique elements of expression.

13 **The Sadness character from *The Moodsters* has
 14 physical and conceptual qualities**

15 241. The Sadness character of Moodsters is not a mere literary
 16 character. Rather, the Sadness character describes and reflects conceptual
 17 characteristics of the character, as set forth and described in this Second
 18 Amended Complaint, and the character is depicted graphically as well. The
 19 Sadness character demonstrates physical as well as conceptual qualities as a
 20 result.

21 **The Sadness character is sufficiently delineated**

22 242. The traits and attributes of the Sadness character, as reflected in
 23 *The Moodsters* Bible and Pilot, sufficiently delineate this character so that the
 24 character is recognizable whenever it appears. These traits and attributes
 25 include, but are not limited to, the Sadness character is an anthropomorphic
 26 animated character represented by the single emotion of sadness; the
 27 application of blue as the Sadness character's core body color; the tendency to
 28 cry, slump down on the ground, and maintain a gloomy, pessimistic attitude;

1 the role the Sadness character maintains within the ensemble of four other
2 characters each represented by the single emotions happiness, anger, fear, and
3 love, and each which is represented by a core body color of yellow, red, green,
4 and pink, respectively; that the Sadness character is not human but has traits
5 and characteristics of humans, is not androgynous, and is not an animal or
6 object; that the Sadness character resides inside a child, along with the other
7 four characters represented by a single emotion and a core body color. Based
8 on the expression of these traits and attributes, and as the Sadness character is
9 depicted graphically, the Sadness character is recognized wherever it appears.

10 243. The traits in the paragraph above have persisted from creation
11 through—and beyond—the pilot episode in 2007.

12 244. The Sadness character of *The Moodsters* is not lightly sketched in the
13 Bible or the Pilot episode. The graphical depictions of the Sadness character are
14 custom designs based on Daniels' conceptualization. These designs were
15 further refined in the two-dimensional drawings in the Bible, and then further
16 detailed through a professional production of the Pilot featuring three-
17 dimensional computer-generated imagery (CGI).

18 245. Substantial resources were devoted to *The Moodsters* characters,
19 including the Sadness character. For instance, over \$3.3M was invested in
20 Moodsters Co. The primary business focus of Moodsters Co. was the
21 development and licensing of an entertainment program, toys, books, and other
22 items centered on the ensemble of Moodsters characters, including the Sadness
23 character, including the Happy character, in order to build a multi-media
24 educational and entertainment platform for children.

25 246. The characters in *The Moodsters* Pilot episode, including the
26 Sadness character, was further refined through the professional and academic
27 guidance and analysis from Professor Bracket and his colleague, Professor
28 Susan E. Rivers. Through their work, as preeminent experts in the field of

1 emotional intelligence and co-founders of the Yale Center for Emotional
 2 Intelligence, they advised Moodsters Co. about the script and attributes and
 3 traits of the characters, including suggesting facial expressions and dialogue for
 4 particular characters based on their review and interpretation of scientific
 5 research on emotions.

6 247. Part of their work included focus groups with children and their
 7 parents who watched a version of the Pilot. The results demonstrated that
 8 children understood and enjoyed the show. 96% of children liked the show, and
 9 82% said they wanted to watch more shows about *The Moodsters*. Parents liked
 10 *The Moodsters* as well.

11 248. The focus groups demonstrated that the children liked *The*
 12 *Moodsters* characters. Specifically, 88% liked the Sadness character.

13 249. Unlike lightly sketched characters in a literary screenplay, *The*
 14 *Moodsters* characters, including the Sadness character, was assessed and tested
 15 by preeminent experts at Yale University.

16 250. Moodsters Co. also discussed *The Moodsters* characters, including
 17 the merchandising potential of *The Moodsters* characters, with a number of
 18 major entertainment, toy, and publishing companies. These companies
 19 included Disney, PBS, Toys "R" Us, Nickelodeon, Scholastic Publishing,
 20 Manhattan Toy Company, among others. Internal research conducted at the
 21 Moodsters Company in 2007 demonstrated that the licensing industry
 22 accounted for approximately \$180 billion in worldwide retail sales, of which
 23 character licensing accounted for \$41 billion of those sales. Nonetheless, the
 24 dominance of Disney and Nickelodeon in media for the relevant demographic
 25 affected the ability of other market entrants to place products at retail.
 26 Moodsters Co., therefore, sought a partnership to bring *The Moodsters*
 27 characters to market.

28 251. None of the companies listed above expressed critique or concern

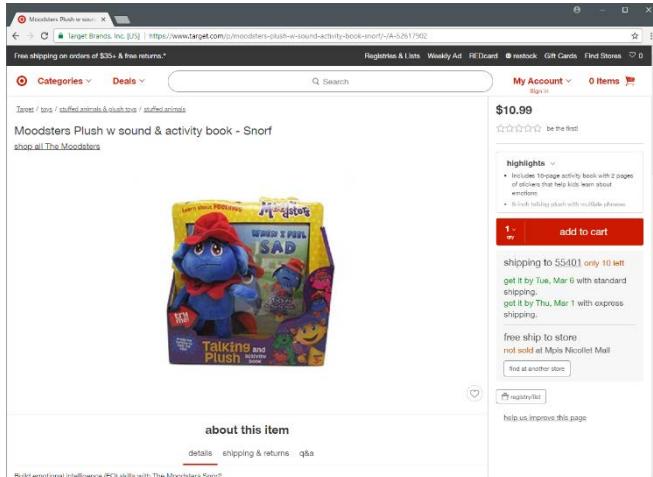
1 that *The Moodsters* characters in general, or the Sadness character specifically,
2 were generic, lightly sketched, lacked distinctive qualities, or were otherwise
3 not sufficiently delineated as a specific, unique, and original group of
4 characters. To the contrary, Moodsters Co. received positive feedback about the
5 uniqueness of *The Moodsters* characters, which included the Sadness character.

6 252. Moodsters Co. has also retained Professor Maureen Furniss to
7 serve as an expert witness in connection with this matter. If given the
8 opportunity to complete an analysis and testify in this action, Professor Furniss
9 would expound on and opine that the Sadness character is sufficiently
10 developed to establish the character's agency to engage and drive a narrative or
11 story.

12 253. While Sadness character in *The Moodsters* characters, along with his
13 unique and original traits and attributes, was introduced in the Bible and Pilot,
14 the Sadness character continues to this day. A second generation of *The*
15 *Moodsters* characters were developed in the 2012-13 time frame. The updated
16 Sadness character is shown below:



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25 By 2015, various products, including toys and books featuring the Sadness
26 character, became available for sale at Target, and then later on national and
27 international platforms such as Amazon.com, Toys "R" Us, Walmart, Barnes
28 and Noble, AAFES (Army Air Force Exchanges), and JCPenney. For instance



Before these Moodsters character products were available for sale, moreover, thousands of Moodsters toys and books, which included the Sadness character, were donated to schools, disaster relief programs, NGOs, and children's hospitals

254. The following traits and attributes from the first generation Sadness character has persisted in the second generation: the Sadness character is an anthropomorphic animated character represented by the single emotion of sadness; the application of blue as the Sadness character's core body color; the tendency to cry, slump down on the ground, and maintain a gloomy, pessimistic attitude; the role the Sadness character maintains within the ensemble of four other characters each represented by the single emotions happiness, anger, fear, and love, and each which is represented by a core body color of yellow, red, green, and pink, respectively; that the Sadness character is not human but has traits and characteristics of humans, is not androgynous, and is not an animal or object.

The Sadness Character is Especially Distinctive

255. The Sadness Character in *The Moodsters* is not a stock character.

256. Stock characters have an important historical background in animated films. If given the opportunity to complete an analysis and testify in this action, Professor Furniss will provide this historical perspective of the role

1 of the stock character. In short, in the earliest years of animation, it was
 2 common for films to have several groups of multiple characters, such as dogs
 3 and lions, which were not differentiated visually or otherwise. In other words,
 4 all dogs were identical. A well-known example of stock characters is from the
 5 Fleischer studio's production of *Snow White* in 1933. This version of *Snow*
 6 *White*, four years before Disney's version, featured Betty Boop in the role of
 7 *Snow White*. The film also included seven dwarfs. But unlike Disney's version
 8 of the dwarfs most people are familiar with today, these dwarfs were all
 9 identical looking. They had no original or unique traits or attributes. These
 10 dwarfs were stock characters.

11 257. Disney was one of the first animation studios to break away from
 12 stock characters. In 1937, for instance, Disney released its version of *Snow*
 13 *White and Seven Dwarfs*. Unlike the Fleischer version, Disney made each dwarf
 14 its own distinctive character. While the dwarfs are similar in terms of size and
 15 shape, their personalities come through their named attributes; for example, the
 16 Sneezy dwarf is always sneezing and the Bashful dwarf is very shy. Notably,
 17 these individualized traits and characteristics come through in the movie.
 18 Nevertheless, the individual dwarfs are not always instantly recognizable to the
 19 ordinary observer, as some times in the film they looked indistinguishable, such
 20 as shown below:



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 26 258. The Sadness character is not a stock character. The Sadness
 27 character is unique and individual, and maintains a specific role within the
 28 ensemble of Moodsters characters. As set forth above, Disney had never before

1 distributed a film or show that featured a collection of five single-emotion
 2 characters, which included a Sadness character with the particular traits and
 3 attributes of the Sadness character in *The Moodsters*.

4 259. Moodsters Co. is not aware of any other previous animated works
 5 that featured a collection of five characters each represented by a single
 6 emotion, which included a character represented by the single emotion of
 7 sadness. Moodsters Co. is similarly unaware of any previous animated works
 8 that featured five characters each represented by a single emotion and
 9 designated by core body colors linked to each emotion, of which the Sadness
 10 character designated by the core body color blue, interacts cohesively with four
 11 other characters each represented by a single emotion and corresponding core
 12 body color. Furthermore, as set forth in paragraphs 179-92 above, there are a
 13 range of options for expressing the idea of single emotion characters, including
 14 a Sadness character; the particular attributes and traits expressed in the Sadness
 15 character underscore the uniqueness of this character. For these reasons, among
 16 others, the Sadness character of *The Moodsters* is not a general, stereotypical, or
 17 stock character. To the contrary, the originality of this character distinguishes
 18 the Sadness character from animated characters outside of *The Moodsters*, which
 19 renders the Sadness character especially distinctive and containing unique
 20 elements of expression.

21 260. Professor Furniss agrees with the allegations set forth in paragraph
 22 259 based on her analysis to date. If given the opportunity to complete an
 23 analysis and testify in this action, Professor Furniss will further analyze and
 24 opine on the history of animated works, and address the unique elements of
 25 expression and especially distinctive characteristics of the collection of
 26 Moodsters characters compared to other characters in works that predated *The*
 27 *Moodsters*.

28 **Disney·Pixar's *Inside Out* Copied *The Moodsters* Sadness Character**

1 261. Disney·Pixar had access to *The Moodsters*, including the Sadness
 2 character, before Disney·Pixar started to work on *Inside Out* in 2010.

3 262. Disney·Pixar's *Inside Out* infringes The Moodsters Company's
 4 protectable and original components of *The Moodsters*, and specifically the
 5 Sadness character.

6 263. The unique and original expressive elements of the Sadness
 7 character include but are not limited to: an anthropomorphic animated
 8 character represented by the single emotion of sadness; the application of blue
 9 as the Sadness character's core body color; the tendency to cry, slump down on
 10 the ground, and maintain a gloomy, pessimistic attitude; the role that the
 11 Sadness character maintains within the ensemble of four other characters each
 12 represented by a single emotion, including happiness, anger, and fear, and each
 13 of which is represented by a core body color, including yellow, red, and green;
 14 that the Sadness character is not human but has traits and characteristics of
 15 humans, is not androgynous, and is not an animal or object; that the Sadness
 16 character resides inside a child along with the other four characters represented
 17 by a single emotion and a core body color.

18 264. These elements, individually and as a selection, coordination, and
 19 arrangement, are protectable and original elements of The Moodsters Company's
 20 copyright in *The Moodsters*, as set forth in the Sadness character.

21 265. These elements of expression, individually or in combination, are
 22 not *scènes à faire*.

23 266. *Inside Out*'s Sadness character is colored blue, and one of five main
 24 characters in the movie. Sadness finds it so hard to be positive. Sometimes it
 25 seems like the best thing to do is just lie on the floor and have a good cry.

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6 267. Disney·Pixar's *Inside Out* copied protectable components of The
7 Moodsters Company's copyright in the Sadness character in *The Moodsters*. The
8 Sadness character in Disney·Pixar's *Inside Out*, as set forth herein and in the
9 paragraphs above, is substantially similar to the protectable components of the
10 Sadness character in *The Moodsters*.

Three 3D-animated characters from the movie Inside Out are shown side-by-side. From left to right: Sadness, a small blue dog-like creature with a long black tail and a tuft of hair on its head; Joy, a large blue elephant wearing a red fedora and a red cape; and Anger, a large blue girl with short blue hair and purple-rimmed glasses.

19 268. Through the release of *Inside Out*, and the sales of *Inside Out*
20 merchandise, Disney·Pixar has directly, contributorily, and vicariously
21 infringed The Moodsters Company's protectable components of its copyright in
22 the Sadness character of *The Moodsters*.

23 269. By virtue of Disney·Pixar's infringement, The Moodsters Company
24 is entitled to recover its actual damages and Disney·Pixar's profits in an amount
25 to be proved at trial (or in the alternative statutory damages), its attorneys' fees
26 and costs, and all other relief allowed under the Copyright Act.

27 || Count 5

28 Copyright Infringement (the Anger character)

- 66 -

SECOND AMENDED COMPLAINT

1 270. The Moodsters Company repeats and realleges all allegations set
2 forth above in paragraphs 1-269 as if they were stated in full and incorporated
3 herein.

4 271. One protectable component within The Moodsters Company's
5 copyright in *The Moodsters* is the Anger character. The Moodsters Company is
6 the exclusive owner to all rights in the copyright to the Anger character of *The*
7 *Moodsters*, as described above.

8 272. The Anger character in *The Moodsters* is an anthropomorphized
9 animated character that represents the emotion of anger, and is designated with
10 the core body color of red.



19 273. The Anger character is most likely to blow her top. In fact, when
20 she becomes furious, lightning bolts appear and explode with sparks from her
21 head.
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274. The Anger character expresses the single emotion character of anger.

The Anger Character is Protected by Copyright

275. The Anger Character of *The Moodsters* is protected by copyright. The Anger character is fundamentally original—the *sine qua non* of copyright law.

276. The Anger character of Moodsters was created, for purposes of copyright law, no later than 2005 when the character appeared and was described in *The Moodsters* Bible. The Anger character was further refined and developed in *The Moodsters* Pilot episode in 2007. In both *The Moodsters* Pilot and Bible, the Anger character was fixed in a tangible medium of expression.

277. The Anger character is protected by copyright under both the three-part test applied for animated characters. Under the Ninth Circuit's three-part test, characters are protected by copyright if they (1) have physical as well as conceptual qualities; (2) are sufficiently delineated to be recognizable as the same character whenever they appear; and (3) are especially distinctive and contain some unique elements of expression.

The Anger character from *The Moodsters* has physical and conceptual qualities

278. The Anger character of Moodsters is not a mere literary character. Rather, the Anger character describes and reflects conceptual characteristics of the character, as set forth and described in this Second Amended Complaint, and the character is depicted graphically as well. The Anger character demonstrates physical as well as conceptual qualities as a result.

The Anger character is sufficiently delineated

279. The traits and attributes for the Anger character, as reflected in *The Moodsters* Bible and Pilot, sufficiently delineate this character so that the character is recognizable whenever it appears. These traits and attributes

1 include, but are not limited to, the Anger character is an anthropomorphic
2 animated character represented by the single emotion of anger; the application
3 of red as the Anger character's core body color; the tendency to literally
4 explode from the head when most angry; the role the Anger character
5 maintains within the ensemble of four other characters each represented by the
6 single emotions happiness, sadness, fear, and love, and each which is
7 represented by a core body color of yellow, blue, green, and pink, respectively;
8 that the Anger character is not human but has traits and characteristics of
9 humans, is not androgynous, and is not an animal or object; that the Anger
10 character resides inside a child, along with the other four characters represented
11 by a single emotion and a core body color. Based on the expression of these
12 traits and attributes, and as the Anger character is depicted graphically, the
13 Anger character is recognized wherever it appears.

14 280. The traits in the paragraph above have persisted from creation
15 through the pilot episode in 2007.

16 281. The Anger character of *The Moodsters* is not lightly sketched in the
17 Bible or the Pilot episode. The graphical depictions of the Anger character are
18 custom designs based on Daniels' conceptualization. These designs were
19 further refined in the two-dimensional drawings in the Bible, and then further
20 detailed through a professional production of the Pilot featuring three-
21 dimensional computer-generated imagery (CGI).

22 282. Substantial resources were devoted to *The Moodsters* characters,
23 including the Anger character. For instance, over \$3.3M was invested in
24 Moodsters Co. The primary business focus of Moodsters Co. was the
25 development and licensing of an entertainment program, toys, books, and other
26 items centered on the ensemble of Moodsters characters, including the Anger
27 character, in order to build a multi-media educational and entertainment
28 platform for children.

1 283. The characters in *The Moodsters* Pilot episode, including the Anger
2 character, was further refined through the professional and academic guidance
3 and analysis from Professor Bracket and his colleague, Professor Susan E.
4 Rivers. Through their work, as preeminent experts in the field of emotional
5 intelligence and co-founders of the Yale Center for Emotional Intelligence, they
6 advised Moodsters Co. about the script and attributes and traits of the
7 characters, including suggesting facial expressions and dialogue for particular
8 characters based on their review and interpretation of scientific research on
9 emotions.

10 284. Part of their work included focus groups with children and their
11 parents who watched a version of the Pilot. The results demonstrated that
12 children understood and enjoyed the show. 96% of children liked the show, and
13 82% said they wanted to watch more shows about *The Moodsters*. Parents liked
14 *The Moodsters* as well.

15 285. The focus groups demonstrated that the children liked *The*
16 *Moodsters* characters. Specifically, 88% liked the Anger character.

17 286. Unlike lightly sketched characters in a literary screenplay, *The*
18 *Moodsters* characters, including the Anger character, was assessed and tested by
19 preeminent experts at Yale University.

20 287. Moodsters Co. also discussed *The Moodsters* characters, including
21 the merchandising potential of *The Moodsters* characters, with a number of
22 major entertainment, toy, and publishing companies. These companies
23 included Disney, PBS, Toys “R” Us, Nickelodeon, Scholastic Publishing,
24 Manhattan Toy Company, among others. Internal research conducted at the
25 Moodsters Company in 2007 demonstrated that the licensing industry
26 accounted for approximately \$180 billion in worldwide retail sales, of which
27 character licensing accounted for \$41 billion of those sales. Nonetheless, the
28 dominance of Disney and Nickelodeon in media for the relevant demographic

1 affected the ability of other market entrants to place products at retail.
2 Moodsters Co., therefore, sought a partnership to bring *The Moodsters*
3 characters to market.

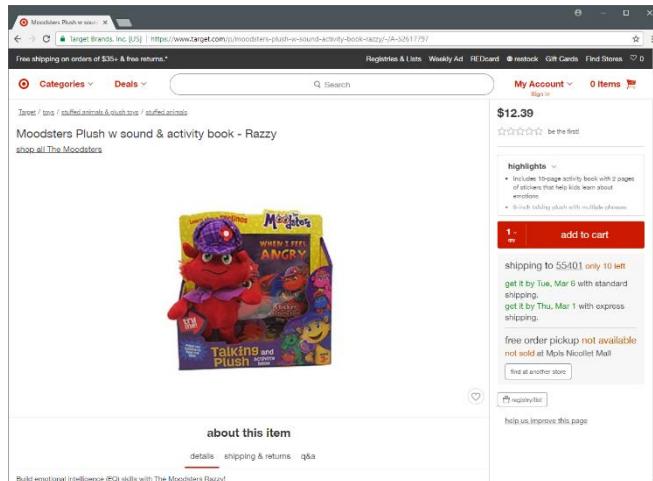
4 288. None of the companies listed above expressed critique or concern
5 that *The Moodsters* characters in general, or the Anger character specifically,
6 were generic, lightly sketched, lacked distinctive qualities, or were otherwise
7 not sufficiently delineated as a specific, unique, and original group of
8 characters. To the contrary, Moodsters Co. received positive feedback about the
9 uniqueness of *The Moodsters* characters, which included the Anger character.

10 289. Moodsters Co. has also retained Professor Maureen Furniss to
11 serve as an expert witness in connection with this matter. If given the
12 opportunity to complete an analysis and testify in this action, Professor Furniss
13 would expound on and opine that the Anger character is sufficiently developed
14 to establish the character's agency to engage and drive a narrative or story.

15 290. While Anger character in *The Moodsters* characters, along with her
16 unique and original traits and attributes, was introduced in the Bible and Pilot,
17 the Anger character continues to this day. A second generation of *The Moodsters*
18 characters were developed in the 2012-13 time frame. The updated Anger
19 character is shown below:



1 By 2015, various products, including toys and books featuring the Anger
 2 character, became available for sale at Target, and then later on national and
 3 international platforms such as Amazon.com, Toys “R” Us, Walmart, Barnes
 4 and Noble, AAFES (Army Air Force Exchanges), and JCPenney. For instance



13 Before these Moodsters character products were available for sale, moreover,
 14 thousands of Moodsters toys and books, which included the Anger character,
 15 were donated to schools, disaster relief programs, NGOs, and children’s
 16 hospitals.

17 291. The following traits and attributes from the first generation Anger
 18 character has persisted in the second generation: the Anger character being an
 19 anthropomorphic animated character represented by the single emotion of
 20 anger; the application of red as the Anger character’s core body color; the
 21 tendency to literally explode from the head when most angry; the role the
 22 Anger character maintains within the ensemble of four other characters each
 23 represented by the single emotions happiness, sadness, fear, and love, and each
 24 which is represented by a core body color of yellow, blue, green, and pink,
 25 respectively; that the Anger character is animated, not human but has traits and
 26 characteristics that are, not androgynous, and not an animal or object.

27 **The Anger Character is Especially Distinctive**

28 292. The Anger character in *The Moodsters* is not a stock character.

1 293. Stock characters have an important historical background in
2 animated films. If given the opportunity to complete an analysis and testify in
3 this action, Professor Furniss will provide this historical perspective of the role
4 of the stock character. In short, in the earliest years of animation, it was
5 common for films to have several groups of multiple characters, such as dogs
6 and lions, which were not differentiated visually or otherwise. In other words,
7 all dogs were identical. A well-known example of stock characters is from the
8 Fleischer studio's production of *Snow White* in 1933. This version of *Snow*
9 *White*, four years before Disney's version, featured Betty Boop in the role of
10 *Snow White*. The film also included seven dwarfs. But unlike Disney's version
11 of the dwarfs most people are familiar with today, these dwarfs were all
12 identical looking. They had no original or unique traits or attributes. These
13 dwarfs were stock characters.

14 294. Disney was one of the first animation studios to break away from
15 stock characters. In 1937, for instance, Disney released its version of *Snow*
16 *White and Seven Dwarfs*. Unlike the Fleischer version, Disney made each dwarf
17 its own distinctive character. While the dwarfs are similar in terms of size and
18 shape, their personalities come through their named attributes; for example, the
19 Sneezy dwarf is always sneezing and the Bashful dwarf is very shy. Notably,
20 these individualized traits and characteristics come through in the movie.
21 Nevertheless, the individual dwarfs are not always instantly recognizable to the
22 ordinary observer, as some times in the film they looked indistinguishable, such
23 as shown below:



1 295. The Anger character is not a stock character. The Anger character
2 is unique and individual, and maintains a specific role within the ensemble of
3 Moodsters characters. As set forth above, Disney had never before distributed a
4 film or show that featured a collection of five single-emotion characters, which
5 included an Anger character with the particular traits and attributes of the
6 Anger character in *The Moodsters*.

7 296. Moodsters Co. is not aware of any other previous animated works
8 that featured a collection of five characters each represented by a single
9 emotion, which included a character represented by the single emotion of
10 anger. Moodsters Co. is similarly unaware of any previous animated works that
11 featured five characters each represented by a single emotion and designated by
12 core body colors linked to each emotion, of which the anger character
13 designated by the core body color red, interacts cohesively with four other
14 characters each represented by a single emotion and corresponding core body
15 color. Furthermore, as set forth in paragraphs 179-92 above, there are a range
16 of options for expressing the idea of single emotion characters, including an
17 Anger character; the particular attributes and traits expressed in the Anger
18 character underscore the uniqueness of this character. For these reasons, among
19 others, the Anger character of *The Moodsters* is not a general, stereotypical, or
20 stock character. To the contrary, the originality of this character distinguishes
21 the Anger character from animated characters outside of *The Moodsters*, which
22 renders the Anger character especially distinctive and containing unique
23 elements of expression.

24 297. Professor Furniss agrees with the allegations set forth in paragraph
25 296 based on her analysis to date. If given the opportunity to complete an
26 analysis and testify in this action, Professor Furniss will further analyze and
27 opine on the history of animated works, and address the unique elements of
28 expression and especially distinctive characteristics of the collection of

1 Moodsters characters compared to other characters in works that predated *The*
2 *Moodsters*.

3 **Disney·Pixar's *Inside Out* Copied *The Moodsters* Anger Character**

4 298. Disney·Pixar had access to *The Moodsters*, including the Anger
5 character, before Disney·Pixar started working on *Inside Out* in 2010.

6 299. The Anger character's unique expressive elements include but are
7 not limited to: an anthropomorphic animated character represented by the
8 single emotion of anger; the application of red as the character's core body
9 color; the tendency to literally explode from the head when most angry; the role
10 the Anger character maintains within the ensemble of four other characters
11 each represented by a single emotion, including happiness, sadness, and fear,
12 and each character represented by a core body color, including yellow and blue;
13 the character is not human but has traits and characteristics that are, is not
14 androgynous, and not an animal or object; the Anger character resides inside a
15 child, along with the other four characters represented by a single emotion and
16 core body color.

17 300. These elements, individually and as a selection, coordination, and
18 arrangement, are protectable and original elements of The Moodsters
19 Company's copyright in *The Moodsters*, as set forth in the Anger character.

20 301. These elements of expression, individually or in combination, are
21 not *scènes à faire*.

22 302. Before *Inside Out*, Disney·Pixar had never before released a film
23 with an anthropomorphized character that represented the single emotion of
24 anger, that was designated by the core body color of red, and that exploded
25 from the head.

26 303. The character Anger in *Inside Out* is one of five main characters in
27 the movie.

28 304. *Inside Out's* Anger character is colored red, has a fiery spirit, and

1 tends to explode (literally) when things don't go as planned. The character
2 displays fire exploding from its head at such times.



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11 305. Disney·Pixar's *Inside Out* copied protectable components of The
12 Moodsters Company's copyright in the Anger character in *The Moodsters*. The
13 Anger character in Disney·Pixar's *Inside Out*, as set forth herein and in the
14 paragraphs above, is substantially similar to the protectable components of the
15 Anger character in *The Moodsters*.



1 306. Through the release of *Inside Out*, and the sales of *Inside Out*
2 merchandise, Disney·Pixar has directly, contributorily, and vicariously
3 infringed The Moodsters Company's protectable components of its copyright in
4 *The Moodsters*, including the Anger character.

5 307. By virtue of Disney·Pixar's infringement, The Moodsters Company
6 is entitled to recover its actual damages and Disney·Pixar's profits in an amount
7 to be proved at trial (or in the alternative statutory damages), its attorneys' fees
8 and costs, and all other relief allowed under the Copyright Act.

Count 6

Copyright Infringement (the Fear character)

11 308. The Moodsters Company repeats and realleges all allegations set
12 forth above in paragraphs 1-307 as if they were stated in full and incorporated
13 herein.

14 309. One protectable component within The Moodsters Company's
15 copyright in *The Moodsters* is the Fear character (Scootz). The Moodsters
16 Company is the exclusive owner to all rights in the copyright to the Fear
17 character of *The Moodsters*.

18 310. The Fear character is an anthropomorphized animated character
19 that represents the single emotion of fear, and that is designated by the core
20 body color of green. He is a nervous Nellie. Everything frightens him.



The Fear Character is Protected by Copyright

311. The Fear character of *The Moodsters* is protected by copyright. The Fear character is fundamentally original—the *sine qua non* of copyright law.

312. The Fear character of Moodsters was created, for purposes of copyright law, no later than 2005 when the character appeared and was described in *The Moodsters* Bible. The Fear character was further refined and developed in *The Moodsters* Pilot episode in 2007. In both *The Moodsters* Pilot and Bible, the Fear character was fixed in a tangible medium of expression.

313. The Fear character is protected by copyright under both the three-part test applied for animated characters. Under the Ninth Circuit's three-part test, characters are protected by copyright if they (1) have physical as well as conceptual qualities; (2) are sufficiently delineated to be recognizable as the same character whenever they appear; and (3) are especially distinctive and contain some unique elements of expression.

The Fear character from *The Moodsters* has physical and conceptual qualities

314. The Fear character of Moodsters is not a mere literary character. Rather, the Fear character describes and reflects conceptual characteristics of the character, as set forth and described in this Second Amended Complaint, and the character is depicted graphically as well. The Fear character demonstrates physical as well as conceptual qualities as a result.

The Fear character is sufficiently delineated

315. The traits and attributes for the Fear character, as reflected in *The Moodsters* Bible and Pilot, sufficiently delineate this character so that the character is recognizable whenever it appears. These traits and attributes include, but are not limited to, the Fear character is an anthropomorphic animated character represented by the single emotion of fear; the application of green as the Fear character's core body color; the tendency to shield and cover his body, and hide or shut his eyes in fear; the role the Fear character maintains

1 within the ensemble of four other characters each represented by one of the
2 single emotions of happiness, sadness, anger, and love, and each which is
3 represented by a core body color of yellow, blue, red, and pink, respectively;
4 that the Fear character is not human but has traits and characteristics of
5 humans, is not androgynous, and is not an animal or object; that the Fear
6 character resides inside a child, along with the other four characters represented
7 by a single emotion and a core body color. Based on the expression of these
8 traits and attributes, and as the Fear character is depicted graphically, the Fear
9 character is recognized wherever it appears.

10 316. The traits in the paragraph above have persisted from creation
11 through—and beyond—the pilot episode in 2007.

12 317. The Fear character of *The Moodsters* is not lightly sketched in the
13 Bible or the Pilot episode. The graphical depictions of the Fear character are
14 custom designs based on Daniels' conceptualization. These designs were
15 further refined in the two-dimensional drawings in the Bible, and then further
16 detailed through a professional production of the Pilot featuring three-
17 dimensional computer-generated imagery (CGI).

18 318. Substantial resources were devoted to *The Moodsters* characters,
19 including the Fear character. For instance, over \$3.3M was invested in
20 Moodsters Co. The primary business focus of Moodsters Co. was the
21 development and licensing of an entertainment program, toys, books, and other
22 items centered on the ensemble of Moodsters characters, including the Fear
23 character, in order to build a multi-media educational and entertainment
24 platform for children.

25 319. The characters in *The Moodsters* Pilot episode, including the Fear
26 character, was further refined through the professional and academic guidance
27 and analysis from Professor Bracket and his colleague, Professor Susan E.
28 Rivers. Through their work, as preeminent experts in the field of emotional

1 intelligence and co-founders of the Yale Center for Emotional Intelligence, they
 2 advised Moodsters Co. about the script and attributes and traits of the
 3 characters, including suggesting facial expressions and dialogue for particular
 4 characters based on their review and interpretation of scientific research on
 5 emotions.

6 320. Part of their work included focus groups with children and their
 7 parents who watched a version of the Pilot. The results demonstrated that
 8 children understood and enjoyed the show. 96% of children liked the show, and
 9 82% said they wanted to watch more shows about *The Moodsters*. Parents liked
 10 *The Moodsters* as well.

11 321. The focus groups demonstrated that the children liked *The*
 12 *Moodsters* characters. Specifically, 100% liked the Fear character.

13 322. Unlike lightly sketched characters in a literary screenplay, *The*
 14 *Moodsters* characters, including the Fear character, was assessed and tested by
 15 preeminent experts at Yale University.

16 323. Moodsters Co. also discussed *The Moodsters* characters, including
 17 the merchandising potential of *The Moodsters* characters, with a number of
 18 major entertainment, toy, and publishing companies. These companies
 19 included Disney, PBS, Nickelodeon, Scholastic Publishing, Manhattan Toy
 20 Company, among others. Internal research conducted at the Moodsters
 21 Company in 2007 demonstrated that the licensing industry accounted for
 22 approximately \$180 billion in worldwide retail sales, of which character
 23 licensing accounted for \$41 billion of those sales. Nonetheless, the dominance
 24 of Disney and Nickelodeon in media for the relevant demographic affected the
 25 ability of other market entrants to place products at retail. Moodsters Co.,
 26 therefore, sought a partnership to bring *The Moodsters* characters to market.

27 324. None of the companies listed above expressed critique or concern
 28 that *The Moodsters* characters in general, or the Fear character specifically, were

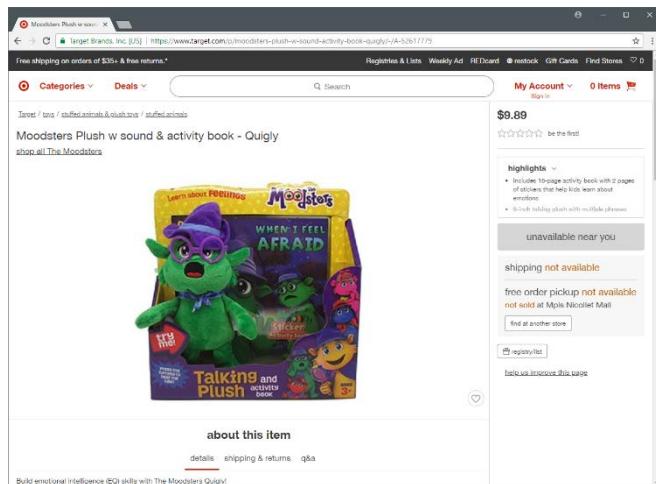
1 generic, lightly sketched, lacked distinctive qualities, or were otherwise not
2 sufficiently delineated as a specific, unique, and original group of characters.
3 To the contrary, Moodsters Co. received positive feedback about the
4 uniqueness of *The Moodsters* characters, which included the Fear character.

5 325. Moodsters Co. has also retained Professor Maureen Furniss to
6 serve as an expert witness in connection with this matter. If given the
7 opportunity to complete an analysis and testify in this action, Professor Furniss
8 would expound on and opine that the Fear character is sufficiently developed
9 to establish the character's agency to engage and drive a narrative or story.

10 326. While Fear character in *The Moodsters* characters, along with his
11 unique and original traits and attributes, was introduced in the Bible and Pilot,
12 the Fear character continues to this day. A second generation of *The Moodsters*
13 characters were developed in the 2012-13 time frame. The updated Fear
14 character is shown below:



23 By 2015, various products, including toys and books featuring the Fear
24 character, became available for sale at Target, and then later on national and
25 international platforms such as Amazon.com, Toys "R" Us, Walmart, Barnes
26 and Noble, AAFES (Army Air Force Exchanges), and JCPenney. For instance



Before these Moodsters character products were available for sale, moreover, thousands of Moodsters toys and books, which included the Fear character, were donated to schools, disaster relief programs, NGOs, and children's hospitals.

327. The following traits and attributes from the first generation Fear character has persisted in the second generation: the Fear character is an anthropomorphic animated character represented by the single emotion of fear; the application of green as the Fear character's core body color; the tendency to shield and cover his body, and hide or shut his eyes in fear; the role the Fear character maintains within the ensemble of four other characters each represented by the single emotions happiness, sadness, anger, and love, and each which is represented by a core body color of yellow, blue, red, and pink, respectively; that the Fear character is not human but has traits and characteristics that are human, is not androgynous, and is not an animal or object.

The Fear Character is Especially Distinctive

328. The Fear character in *The Moodsters* is not a stock character.

329. Stock characters have an important historical background in animated films. If given the opportunity to complete an analysis and testify in this action, Professor Furniss will provide this historical perspective of the role of the stock character. In short, in the earliest years of animation, it was

1 common for films to have several groups of multiple characters, such as dogs
 2 and lions, which were not differentiated visually or otherwise. In other words,
 3 all dogs were identical. A well-known example of stock characters is from the
 4 Fleischer studio's production of *Snow White* in 1933. This version of *Snow*
 5 *White*, four years before Disney's version, featured Betty Boop in the role of
 6 *Snow White*. The film also included seven dwarfs. But unlike Disney's version
 7 of the dwarfs most people are familiar with today, these dwarfs were all
 8 identical looking. They had no original or unique traits or attributes. These
 9 dwarfs were stock characters.

10 330. Disney was one of the first animation studios to break away from
 11 stock characters. In 1937, for instance, Disney released its version of *Snow*
 12 *White and Seven Dwarfs*. Unlike the Fleischer version, Disney made each dwarf
 13 its own distinctive character. While the dwarfs are similar in terms of size and
 14 shape, their personalities come through their named attributes; for example, the
 15 Sneezy dwarf is always sneezing and the Bashful dwarf is very shy. Notably,
 16 these individualized traits and characteristics come through in the movie.
 17 Nevertheless, the individual dwarfs are not always instantly recognizable to the
 18 ordinary observer, as some times in the film they looked indistinguishable, such
 19 as shown below:



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 25 331. The Fear character is not a stock character. The Fear character is
 26 unique and individual, and maintains a specific role within the ensemble of
 27 Moodsters characters. As set forth above, Disney had never before distributed a
 28 film or show that featured a collection of five single-emotion characters, which

1 included a Fear character with the particular traits and attributes of the Fear
2 character in *The Moodsters*.

3 332. Moodsters Co. is not aware of any other previous animated works
4 that featured a collection of five characters each represented by a single
5 emotion, which included a character represented by the single emotion of fear.
6 Moodsters Co. is similarly unaware of any previous animated works that
7 featured five characters each represented by a single emotion and designated by
8 core body colors linked to each emotion, of which the fear character designated
9 by the core body color green, interacts cohesively with four other characters
10 each represented by a single emotion and corresponding core body color.
11 Furthermore, as set forth in paragraphs 179-92 above, there are a range of
12 options for expressing the idea of single emotion characters, including a Fear
13 character; the particular attributes and traits expressed in the Fear character
14 underscore the uniqueness of this character. For these reasons, among others,
15 the Fear character of *The Moodsters* is not a general, stereotypical, or stock
16 character. To the contrary, the originality of this character distinguishes the
17 Fear character from animated characters outside of *The Moodsters*, which
18 renders the Fear character especially distinctive and containing unique elements
19 of expression.

20 333. Professor Furniss agrees with the allegations set forth in paragraph
21 332 based on her analysis to date. If given the opportunity to complete an
22 analysis and testify in this action, Professor Furniss will further analyze and
23 opine on the history of animated works, and address the unique elements of
24 expression and especially distinctive characteristics of the collection of
25 Moodsters characters compared to other characters in works that predated *The
26 Moodsters*.

Disney Pixar's *Inside Out* Copied *The Moodsters* Fear Character

28 ||| 334. Disney·Pixar had access to *The Moodsters*, including the Fear

1 character, before Disney·Pixar started to work on *Inside Out* in 2010.

2 335. Disney·Pixar's *Inside Out* infringes The Moodsters Company's
3 protectable and original components of the copyright in the Fear character of
4 *The Moodsters*.

5 336. The unique expressive elements of the Fear character include but
6 are not limited to: an anthropomorphized animated character represented by
7 the single emotion of fear; the application of a core body color for the character;
8 the tendency to shield and cover his body, hide or shut his eyes out of fear; the
9 role the Fear character maintains within the ensemble of four other characters
10 each represented by a single emotion, including happiness, sadness, and anger,
11 and each character represented by a core body color, including yellow, blue,
12 and red; the character is not human but has traits and attributes of humans, is
13 not androgynous, and is not an animal or object; that the Fear character resides
14 inside a child, along with the other four characters each represented by a single
15 emotion and a core body color.

16 337. These elements, individually and as a selection, coordination, and
17 arrangement, are protectable elements of The Moodsters Company's copyright
18 in *The Moodsters*, as set forth in Fear character.

19 338. These elements of expression, individually or in combination, are
20 not *scènes à faire*.

21 339. Before *Inside Out*, Disney·Pixar had never before released a film
22 with an anthropomorphized character that represented the single emotion of
23 fear, and that was designated by a core body color.

24 340. *Inside Out*'s Fear character has a core body color (purple), and is
25 one of five main characters in the movie.

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12 341. The Fear character is constantly on the lookout for potential
13 disasters. There are very few activities and events that Fear does not find to be
14 dangerous and possibly fatal.

15 342. Disney·Pixar's *Inside Out* copied protectable components of The
16 Moodsters Company's copyright in the Fear character in *The Moodsters*. The
17 Fear character in Disney·Pixar's *Inside Out*, as set forth herein and in the
18 paragraphs above, is substantially similar to the protectable components of the
19 Fear character in *The Moodsters*.

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1 343. Through the release of *Inside Out*, and the sales of *Inside Out*
2 merchandise, Disney·Pixar has directly, contributorily, and vicariously
3 infringed The Moodsters Company's protectable components of its copyright in
4 the Scootz character of *The Moodsters*.

5 344. By virtue of Disney·Pixar's infringement, The Moodsters Company
6 is entitled to recover its actual damages and Disney·Pixar's profits in an amount
7 to be proved at trial (or in the alternative statutory damages), its attorneys' fees
8 and costs, and all other relief allowed under the Copyright Act.

Prayer for Relief

10 Daniels and The Moodsters Company request the following relief:

11 1. Entry of judgment in favor of Daniels and against Disney·Pixar on
12 Count 1 in this Complaint, in an amount to be determined at trial, but at least
13 in an amount that exceeds the jurisdictional limits of this Court:

14 2. An award of damages to Daniels for Disney·Pixar's breach of the
15 parties' implied-in-fact contract;

16 3. Entry of judgment in favor of The Moodsters Company and against
17 Disney·Pixar on Counts 2-6 in this Complaint for infringement of The
18 Moodsters Company's copyright in *The Moodsters*;

19 4. An award of actual damages The Moodsters Company has incurred
20 as a result of Disney·Pixar's copyright infringement;

21 5. In the alternative to actual damages, an award of statutory damages
22 to The Moodsters Company for some or all of Disney·Pixar's copyright
23 infringement;

24 6. An award of all Disney·Pixar's profits from and relating to *Inside Out*
25 to The Moodsters Company;

26 7. An award of attorneys' fees, costs, expenses, and disbursements;

27 8. An award of pre-judgment and post-judgment interest on all damages
28 owed to Daniels and The Moodsters Company;

1 9. An order directing Disney·Pixar to add Daniels and her team to the
2 credits of *Inside Out*; and

3 10. Such other and further relief as is just and proper.

4 Dated: March 1, 2018

Robins Kaplan LLP

5 By: /s/ Ronald J. Schutz
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Jury Trial Demand

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all claims so triable.

Dated: March 1, 2018

Robins Kaplan LLP

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